

Legislative Audit Division

State of Montana



Report to the Legislature

October 2002

Performance Audit

Child Protective Services

(House Joint Resolution 32)

STATE DOCUMENTS COLLECTION

Child and Family Services Division

Department of Public Health and Human Services

The Supreme Court of Montana

Department of Justice

DEC 05 2002

MONTANA STATE LIBRARY
1515 E. 6th AVE.
HELENA, MONTANA 59620

This report provides findings and recommendations related to a performance audit of child protective services. These services are primarily administered by the Child and Family Services Division within the Department of Public Health and Human Services. The audit was conducted at the request of the legislature through House Joint Resolution 32. Recommendations within the report address:

- ▶ Compliance with statutory requirements.
- ▶ Case file documentation.
- ▶ Services provided to families.
- ▶ Foster care placements.
- ▶ Evidence of supervisory review.
- ▶ Indian Child Welfare Act.

Direct comments/inquiries to:

Legislative Audit Division

Room 160, State Capitol

PO Box 201705

Helena MT 59620-1705

02P-02

Help eliminate fraud, waste, and abuse in state government. Call the Fraud Hotline at 1-800-222-4446 statewide or 444-4446 in Helena.



3 0864 1001 6815 5

PERFORMANCE AUDITS

Performance audits conducted by the Legislative Audit Division are designed to assess state government operations. From the audit work, a determination is made as to whether agencies and programs are accomplishing their purposes, and whether they can do so with greater efficiency and economy. The audit work is conducted in accordance with audit standards set forth by the United States General Accounting Office.

Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, accounting, logistics, computer science, and engineering.

Performance audits are performed at the request of the Legislative Audit Committee which is a bicameral and bipartisan standing committee of the Montana Legislature. The committee consists of six members of the Senate and six members of the House of Representatives.

MEMBERS OF THE LEGISLATIVE AUDIT COMMITTEE

Senator John Cobb	Representative Joe Balyeat
Senator Jim Elliott	Representative Dee Brown
Senator Dan Harrington	Representative Bill Eggars
Senator Ken Miller	Representative Hal Jacobson
Senator Corey Stapleton	Representative Jeff Pattison, Vice Chair
Senator Jon Tester, Chair	Representative David Wanzenried

LFGISLATIVE AUDIT DIVISION

Scott A. Seacat, Legislative Auditor
John W. Northey, Legal Counsel



Deputy Legislative Auditors:
Jim Pellegrini, Performance Audit
Tori Hunthausen, IS Audit & Operations
James Gillett, Financial-Compliance Audit

October 2002

The Legislative Audit Committee
of the Montana State Legislature:

This is our performance audit of child protective services completed in accordance with House Joint Resolution 32 enacted by the 2001 Legislature. The Child and Family Services Division, Department of Public Health and Human Services (DPHHS), is statutorily designated as the state entity responsible for protection of children who are abused or neglected. Aside from this department, the child protective services system is made up of numerous stakeholders including families, service providers, county attorneys, and district courts.

This report provides information to the legislature regarding the uniformity of child protective services and the application of the Indian Child Welfare Act. Overall, we found lack of uniformity in practices of social workers, county attorneys, and district courts throughout the state. In addition, we noted a need for continued improvement of communication and coordination among the administering entities: Child and Family Services Division, county attorneys, and district courts. Our report includes recommendations for increasing consistency, improving documentation, refocusing supervisory responsibilities, and expanding communication and coordination. Responses from DPHHS, the Montana Supreme Court, and the Montana Department of Justice are contained at the end of the report.

We wish to express our appreciation to various state agency personnel, as well as to the other stakeholders for their cooperation and assistance during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "SCOTT A. SEACAT".

Scott A. Seacat
Legislative Auditor

Legislative Audit Division

Performance Audit

Child Protective Services

(House Joint Resolution 32)

**Child and Family Services Division
Department of Public Health and Human Services
The Supreme Court of Montana
Department of Justice**

Members of the audit staff involved in this audit were Joe Murray, Kent Rice, Kent Wilcox, and Mike Wingard.

Table of Contents

Appointed and Administrative Officials.....	v
Report Summary.....	S-1
Chapter I - Introduction.....	1
Introduction.....	1
House Joint Resolution 32	1
Audit Objectives	1
Audit Scope and Methodologies	2
Framework of Our Review	3
Audit Scope Exclusions	4
Management Memorandums.....	5
Federal Review of CPS Activities Being Completed.....	6
CFSD Has a Wide Range of Responsibilities and Obligations.....	7
Potential Issues for Further Study	8
Foster Care Program	8
Child and Adult Protective Services System	9
Utilization of Title IV-E and IV-B Funding	10
Report Organization.....	10
Chapter II - Background	11
Introduction.....	11
Federal and State Laws	11
Federal Laws Establish the Foundation for CPS Services	11
Indian Child Welfare Act	12
Adoption and Safe Families Act.....	12
State Law Directs Montana CPS Activities	12
Child and Family Services Division	12
Division Funding, Organization, and FTE.....	12
Numerous Stakeholders are Involved in the CPS Process	14
The CPS Process	14
The Report of Abuse or Neglect	16
The Centralized Intake Reporting System.....	16
Child Abuse and Neglect Investigations.....	16
Substantiations of Abuse or Neglect	17
Fair Hearing Process.....	17
Intervention Into a Family Setting	18
Immediate Protection and Emergency Protective Services.....	18
Temporary Investigative Authority	19
Temporary Legal Custody	19
Termination of Parental Rights and Permanent Legal Custody	19
Evidentiary Standards.....	19
Required Judicial Hearings in the CPS Process.....	20
Show Cause Hearing	20
Adjudicatory Hearing	21
Dispositional Hearing.....	21
Permanency Plan Hearing	22
Reports of Abuse and Neglect.....	22
Examples of CPS Cases	23

Table of Contents

Case #1.....	23
Case #2.....	25
Chapter III - General CPS Process.....	27
Introduction.....	27
Is There Compliance With Statutory Requirements?.....	27
Inconsistencies and Noncompliance Identified.....	27
Conclusion: Main Responsibility for Statutory Compliance is with County Attorneys and District Courts	30
Continued Communication and Coordination is Needed.....	31
Role of the Child Protection Unit	32
Conclusion: The CPU's Purpose and Functions Have Been Changing.....	33
Did Case File Documentation Support CFSD Actions/Decisions?.....	34
Case File Documentation is Not Consistent	34
Conclusion: More Specific Case File Policies and Procedures are Needed.....	36
What Services Were Provided to the Family?	37
Inconsistencies and Weaknesses Noted	37
With Whom Was the Child Placed in Foster Care?	39
Placements Meet Policy Expectations But Documentation Does Not Support Decisions	40
Conclusion: Documentation and Communication of Placement Decision Needs Improvement.....	41
What Evidence of Supervisory Review Exists?.....	42
Supervisors Perform Limited Review of CPS Case Files.....	42
Conclusion: Several Steps Need to be Taken to Improve Supervisory Review.....	44
Policy Related to Supervisory Review Needs to be Clarified	45
Master Checklist Modification Would Help Standardize Review	45
Supervisor Caseloads Should Be Reallocated.....	45
Ongoing Performance Appraisals Needed	46
An Ongoing Independent Review Could Help Improve Uniformity	47
Chapter IV - Additional CPS Issues	49
Introduction.....	49
Substantiation Fair Hearing Process	49
Conclusion: Administrative Rules Are Needed and CFSD Policy Needs Clarification.....	50
Legal Representation for Indigent Parents.....	51
How is a Determination Made on Whether Legal Representation Will be Provided?	52
Montana Supreme Court Decisions Associated With Legal Representation	52
Conclusion: Variation in the CPS Process Exists When Legal Representation is Not Appointed to Indigent Parents at the Outset of a Case.....	53

Table of Contents

Maintaining Uninvestigated Abuse and Neglect Reports	53
Analysis of CFSD Activities and Organizational Focus.....	54
CFSD Mission.....	54
Contracted Time Study	55
Staff Turnover.....	55
Caseload Listings.....	56
What Should CFSD Do?.....	56
Conclusion: DPHHS and the Legislature Need to Evaluate CFSD's Primary Mission.....	58
Chapter V - Indian Child Welfare Act.....	59
Introduction.....	59
Why Was ICWA Established?.....	59
Laws Governing Child Protective Services	61
The Montana Constitution Protects Native American Culture and Customs	61
The Montana Supreme Court Has Strictly Interpreted ICWA.....	61
Issues Related to ICWA	62
Is There Compliance With Statutory Requirements?.....	62
Qualified Expert Witnesses Do Not Always Testify At Hearings.....	62
CFSD is Addressing This Issue	63
The Department of Justice is Also Working to Improve Compliance.....	63
Conclusion: CFSD, District Courts and County Attorneys Need to Expand Emphasis on ICWA Compliance	63
What Coordination Occurred Between CFSD and Tribes When Native American Children Were Removed From Parental Custody?.....	64
Improvements Needed in Communication and Coordination.....	64
CFSD Provides Tribes With Program and Technical Assistance	67
Other Options for Improving CFSD and Tribal Communication and Coordination.....	67
Conclusion: CFSD Communication and Coordination With Tribes Has Improved, But Additional Efforts Are Necessary.....	69
Did Case File Documentation Support CFSD Actions/Decisions?.....	70
What Services Were Provided to the Family?	70
Levels of Effort Provided in ICWA Cases is Not Clear	71
CFSD Staff Offer Native Americans Opportunities to Incorporate Spiritual Beliefs and Customs Into Treatment and Case Activities	71
Conclusion: CFSD Should Better Document Active Efforts to Provide Services and Reunify Families.....	72
With Whom Was the Child Placed in Foster Care?.....	72
ICWA Foster Care Placement Preferences	72

Table of Contents

Compliance Efforts With ICWA Foster Care Placement Preferences Could be Improved	73
CFSD Should Explore Options for Increasing Recruitment of Native American Foster Homes	74
Other Options Should Also Be Considered.....	75
Conclusion: CFSD is Generally Compliant With ICWA Placement Preferences But More Emphasis is Needed in Documentation and Recruitment Areas.....	76
ICWA Adoptive Placement Preferences Were Also Reviewed.....	77
Conclusion: CFSD Adoptive Placements Comply With ICWA Placement Preferences	78
What Evidence of Supervisory Review Exists?.....	78
Tribal Governments Can Help Improve CFSD Compliance With ICWA	79
 Chapter VI - Child Protective Services Program Management.....	81
Introduction	81
Training.....	81
More Training is Needed for CFSD Staff.....	82
National Association of Social Workers and Department of Labor Set Training Standards	83
Stakeholders Believe More Uniform Staff Training is Needed.....	83
Training Would Improve Supervisory Skills	83
CFSD Should Set Ongoing Training Standards and Create a Standardized Training Program.....	84
County Attorney and District Court Training.....	85
Conclusion: Additional Stakeholder Training is Needed.....	86
 Appendix A	A-1
House Joint Resolution 32.....	A-3
 Agency Responses.....	B-1
Department of Health and Human Services	B-3
Department of Justice	B-13
Montana Supreme Court.....	B-15

Appointed and Administrative Officials

Department of Public Health and Human Services	Gail Gray, Director Shirley Brown, Acting Administrator, Child and Family Services Division Shirley Brown, Chief, Program Bureau Shirley Tiernan, Chief, Training Bureau Dave Thorson, Chief, Operations and Fiscal Services Bureau
Regional Administrators	Eric Barnosky, Region I, Miles City Cory Costello, Region II, Great Falls Kevin Frank, Region III, Billings Kathy Ostrander, Region IV, Helena Art Dreiling, Region V, Missoula
Department of Justice	Mike McGrath, Attorney General
Montana Supreme Court	Karla Gray, Chief Justice

Introduction

The Department of Public Health and Human Services (DPHHS) is statutorily designated as the agency responsible for the protection of Montana children who are abandoned, neglected or abused. The Child and Family Services Division (CFSD) within DPHHS is assigned responsibility for meeting this statutory mandate. The CFSD must respond to reports of child abuse or neglect and provide protective services when necessary. This includes authority to take temporary or permanent custody of a child when ordered by the court. The child protective services (CPS) system is made up of numerous components and stakeholders, including CFSD, district courts, county attorneys, parents, service providers, and others.

House Joint Resolution 32

House Joint Resolution (HJR) 32 passed by the 2001 Legislature requested a performance audit of the CPS system. HJR 32 language states the process should be reviewed to ensure the department applies the law equally statewide.

Audit Objectives

To accomplish the performance audit, we established objectives based on HJR 32 language. Our objectives included:

1. Determine what child protective services are provided across the state and the extent to which those services are uniform statewide.
2. Review policies and procedures regarding the application of the Indian Child Welfare Act (ICWA) across the state and especially in urban jurisdictions.
3. Determine the extent to which the department's policies and procedures reflect cultural needs and are conducted in a manner that considers cultural practices and language.
4. Determine the extent to which the training of social workers, county attorneys, and courts is relevant regarding state and federal provisions pertaining to child protective services.
5. Examine management, personnel, and training needs of the department for child protective services.

Audit Scope & Methodologies

The CPS system is a complex process in terms of funding, statutory requirements, and the number types of entities involved. As part of

Report Summary

our audit, interviews with CFSD personnel were completed to discuss roles and responsibilities, the CPS process, and ICWA. The main focus of our audit work involved in-depth file review, interviews, and follow-up interviews with CFSD Central Office and field personnel. We also obtained input about CPS from officials outside the department. We interviewed judges, county attorneys, attorneys from the Department of Justice, court appointed special advocates, guardian ad litem, in-home service providers, members of the legislature, tribal officials, and professionals from the private sector involved with Indian affairs. We also talked with several families involved in the CPS process.

In all, we reviewed a total of 60 CPS files, 35 general cases and 25 ICWA cases. The file review concentrated on compliance and documentation related to specific areas of the CPS process we determined were high risk. We visited all five CFSD regions in the state. The other area of concentration for fieldwork was contact and follow-up with tribal representatives. We provided notification of our performance audit to officials of each Montana tribal nation. We interviewed tribal officials and social service personnel regarding the CPS system and the level of communication and coordination with DPHHS.

Federal Laws Establish Foundation for CPS Processes

Federal laws have a direct impact on CPS services at the state level because they establish the foundation for requirements states must meet when providing child protective services. These requirements generally relate to timing of legal proceedings in CPS cases, making reasonable efforts to reunite families, and achieving permanent placements for children when courts determine reunification is not possible.

Indian Child Welfare Act

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 to protect the interests of Native American children and tribes. ICWA was the first statute to protect an ethnic group's interest in a child. ICWA establishes minimum federal standards for CPS cases involving Native American children.

Adoption and Safe Families Act

The Adoption and Safe Families Act (ASFA) was enacted in November 1997 to promote safety and permanence for children who have been abused or neglected. It attempts to address concerns of children either being left in foster care too long or returned to unsafe family situations. ASFA requires or provides incentives for states to change policies and practices to better promote children's safety and timely adoption or other permanency options.

State Law Directs Montana CPS Activities

Title 41, Chapter 3, MCA gives the department authority to become involved in abuse and neglect cases. These laws define the department's jurisdiction in these cases and describe the proceedings directing abuse and neglect cases.

Child and Family Services Division

The Child and Family Services Division (CFSD) administers a variety of services to help protect children who are abused or neglected. These include child protective services, foster care, adoption, family preservation and support, and referral to community and private sector service providers.

CFSD is funded by a combination of state General Fund, state special revenue funds, and federal funds. For the 2003 biennium, the division received appropriation authority of \$96,089,800. The state General Fund provides approximately 44 percent of the division's funding for this time period.

CFSD is headquartered in Helena with a division administrator managing its operations. Regional administrators direct CFSD operations in each region. Regional offices are located in Billings, Great Falls, Helena, Miles City, and Missoula. CFSD offices located in most counties respond to reports of potential child abuse or neglect. Staff located in regional and local offices who are directly involved in CPS cases include social workers, family resource specialists, permanency planning specialists, family group conferencing coordinators, and their supervisors. The CFSD is currently allocated 330 FTE. Approximately 270 of the division's employees are located in the field offices.

Report Summary

Numerous Entities Make Critical Decisions in the CPS Process

In addition to CFSD, there are a number of other entities involved in the CPS process. The general role of many of these entities is to provide checks and balances in the child protective system. This includes reviewing department decisions and actions related to child abuse and neglect reports.

The CPS process requires CFSD personnel, county attorneys, and courts to make numerous decisions during the course of a case. Since these decisions can significantly impact children and families, they are “critical” decisions. Critical decision-making starts with a report on suspected abuse or neglect and continues throughout the process. The division is partially responsible for ensuring critical decision-making complies with state and federal statutes and meets the best interests of the children involved in the CPS process.

Overall Conclusion: Non-Uniformity Exists Statewide

The first area under HJR 32 directed us to review the provision of child protective services across the state and the extent to which those practices are uniform statewide. Based on our review, non-uniformity in CPS practices exists throughout the state. However, some of the non-uniformity in the system is created by other entities involved in the process. While these other entities provide checks and balances to help ensure child protection actions are appropriate, they also add inconsistencies to the CPS process. County attorneys and district court judges have as much control over the CPS process as CFSD. These entities currently have a substantial amount of autonomy, and as this autonomy continues, so will inconsistencies in the CPS process.

Is There Compliance With Statutory Requirements?

Statutory requirements for CPS proceedings include, but are not limited to, “critical” decision areas such as emergency protective services, show cause hearings, temporary investigative authority (TIA), temporary legal custody (TLC), and termination of parental rights.

Main Responsibility for Statutory Compliance with County Attorneys and District Courts

We found statutory hearing and timeline requirements were generally met for a majority of the files reviewed. However, we did identify inconsistencies in practices and procedures throughout the

state, and we also noted some noncompliance. Most of the responsibility for meeting statutory hearing and timeline requirements falls on county attorneys and district courts. It is up to these entities to ensure cases follow the mandated requirements.

Continued Communication and Coordination is Needed

At present, county attorneys and district court judges are elected officials who have a substantial amount of autonomy regarding their respective responsibilities. The authority of the Attorney General and Montana Supreme Court with regard to judges and county attorneys is limited both by statute and recognition of their elected status. Due to this autonomy, we believe there will continue to be inconsistencies in legal procedures and noncompliance with statutes associated with CPS cases. However, expansion of communication and coordination can improve uniformity in the CPS process. Some district courts, county attorneys, and CFSD offices have taken steps to address inconsistencies and issues noted during our review.

CFSD Has the Lead Role in Child Protection

CFSD makes decisions which can significantly impact the lives of children and their families. As a result, CFSD information is integral to the process. Thus, we believe CFSD case file documentation needs to be the best it can be. Implementation of our recommendations should help CFSD increase uniformity of the CPS process.

While improved documentation and development and initiation of policies and procedures will help increase uniformity, ultimately the key component in the successful implementation of such management controls is supervisory assurance these controls are being followed.

Did Case File Documentation Support CFSD Actions/Decisions?

Whenever the department intervenes with a family and removes a child from the parental home, a legal basis must exist for the removal of the child, and for continued placement in foster care. We reviewed case files to determine if they contained consistent documentation to support actions and decisions of CFSD staff. We did not specifically attempt to assess whether evidence gathered on cases met statutory evidentiary standards. This is a judicial decision

Report Summary

made on a case-by-case basis. Our file reviews generally found CFSD staff were gathering information that supported actions taken on CPS cases and district courts supported those actions. However, we noted inconsistencies in how evidence to support department actions was documented. To improve consistency in case file documentation, the CFSD needs more specific policies and procedures specifying how case files should be documented.

What Services Were Provided to the Family?

This section relates to services provided to families involved in child abuse and neglect cases. Statute requires the department to make “reasonable efforts” to prevent removal of a child from their home or to reunify families when removal of a child is necessary. Reasonable efforts include, among other things, developing written case plans and providing services. CFSD policy also provides guidance on reasonable efforts. In most cases, CFSD develops a treatment plan for the family that includes requirements of the parent(s) for reunification to occur such as completion of anger management or parental training classes.

CFSD Makes Efforts to Reunify Families but Inconsistencies Should be Addressed

Services were provided or offered to families in all cases reviewed. CFSD personnel appear to consistently make efforts to reunite families. However, it is the court’s responsibility to determine the reasonableness of CFSD efforts to provide reunification services. Reasonableness is not defined by Montana statute.

While the division makes an effort to reunite families by providing services, we believe the process would benefit from increased uniformity and consistency. The variations in services and treatment plans noted during our review indicate a need for increased management attention. The main required areas of focus appear to be family group decision-making (FGDM) and treatment plans.

With Whom Was the Child Placed in Foster Care?

Section 41-3-101(4), MCA, directs CFSD to place children with extended family prior to placement in an alternative facility, if it is in the best interests of the child and when the division approves the home. Extended family, according to this section of statute, includes adult siblings, grandparents, great-grandparents, aunts, and uncles.

The division refers to extended family placements as kinship placements, and adds godparents, stepparents, and others with significant emotional ties to the child. We reviewed case files for documentation related to placement of children in foster care. Our review concentrated on justification supporting placement decisions, which includes compliance with placement preferences.

Documentation and Communication of Placement Decisions Needs Improvement

While our file review indicated the majority of foster care placements appeared to meet policy expectations, improvements are needed in regard to documentation and communication. Decisions on where to place children are the responsibility of the social worker and supervisor. In practice, it appears social workers generally place children in whatever foster homes are readily available while attempting to identify potential family placements. This decision-making process may include input from the supervisor or family resource specialist, but often times it does not. Our review indicates placement decisions are seldom documented in case files. Social workers are concerned with the safety of children, and documentation of reasons for placement decisions are not a top priority.

CFSD policy provides some direction to social workers regarding foster care placements, but this guidance does not clearly address documentation and communication. Formal procedures are needed to ensure the reason(s) for each foster care placement, including placement changes, are clearly documented in the case file.

What Evidence of Supervisory Review Exists?

According to the CFSD policy manual, social workers or clerical staff are responsible for preparing and maintaining CPS case files. Policy also requires social worker supervisors to review each case and evaluate the services provided to children and their families. Case file reviews should examine all file information to ensure documentation was completed appropriately, completed in a timely manner, and social workers followed proper steps in handling the case. Supervisory review is an important part of the CPS process because it is the first level of checks and balances within the CPS system.

Report Summary

Several Steps Need to be Taken to Improve Supervisory Review

A main cause for the inconsistencies we identified in the CPS process is an appropriate level of supervision is not generally being exercised. There are four reasons a limited amount of supervisory review is occurring. These include: unclear policies related to review requirements, no standardized process for review and documenting files, supervisors carrying CPS case loads, and no ongoing performance appraisal system of supervisors and social workers.

Indian Child Welfare Act

House Joint Resolution 32 (HJR 32) requested an examination of the application of the Indian Child Welfare Act. In practice, case management of ICWA and non-ICWA cases are similar, and the findings and recommendations also apply to ICWA cases. Issues presented in this chapter address activities specific to application of the Indian Child Welfare Act.

ICWA sets higher evidentiary standards for foster and adoptive placements, termination of parental rights, and efforts to provide services to prevent removing Indian children from homes or for reunifying Indian children with families. Subsequent sections of the ICWA chapter address questions about the application of child protective services for Native American children and families.

Overall Conclusion On ICWA Review

Our audit work found CFSD generally complies with, or attempts to comply with ICWA requirements, and recently implemented policies and practices that further promote compliance with the Act. However, there is statewide inconsistency in the overall level of effort to comply.

We also determined CFSD communication and coordination with tribes has improved in recent years, with the division providing tribal governments with some training and technical assistance. However, CFSD can continue to improve communication and coordination with tribes in areas related to joint policy and procedure development, case management, and increased emphasis on foster care recruitment of and training for Native American foster parents.

Additionally, we believe Montana's tribal governments can help CFSD improve its compliance with ICWA. While ICWA places the burden on the state to comply with the Act, and federal law does not obligate tribes to assist the state, tribal governments do bear some responsibility for assisting the state in efforts that promote and protect their cultures and customs. Increased tribal efforts to respond to CFSD requests for information, recruit and train foster parents, and generally help CFSD coordinate case activities when possible can only increase CFSD's ability to serve Indian children.

Is There Compliance With Qualified Expert Witness Requirements?

ICWA requires a qualified expert witness testify about a tribe's culture regarding childcare and family structure at all court hearings addressing placement of an Indian child in an out-of-home placement and termination of parental rights. Congress requires this expert testimony to help remove cultural biases by courts and social workers. Many of the reviewed CPS court hearings involving Indian children did not include testimony from a qualified expert witness. To improve the state's compliance with ICWA, there needs to be increased emphasis on complying with this requirement, including continued efforts to identify and recruit qualified expert witnesses and training for CPS system personnel about the requirements.

What Coordination Occurred Between CFSD and Tribes When Native American Children Were Removed From Parental Custody?

CFSD communication and coordination with tribal governments is essential when Indian children are removed from their homes. To evaluate communication and coordination efforts with tribes, we interviewed CFSD personnel and tribal leaders and representatives. We also reviewed case files to determine whether social worker activities comply with CFSD policies and expectations for tribal coordination.

CFSD has implemented some practices to coordinate training for and technical assistance to tribal governments. CFSD efforts to coordinate policies, procedures, and case management activities with tribes are less consistent, although tribal representatives stated CFSD efforts have improved in recent years. With regard to ICWA case management, there are variations in communication and coordination efforts among regions and between staff. Causes for differences

Report Summary

include factors such as limited oversight by supervisors to verify compliance, misunderstandings of ICWA requirements, and inconsistent compliance with CFSD policies and procedures. We believe modifying CFSD policies and procedures and implementing better management practices can improve communication and coordination with tribes.

What Documentation Was Gathered to Support CFSD Decisions for ICWA Cases?

In any child custody proceeding, CFSD must provide the district court with sufficient evidence demonstrating the need for removing a child from a home and placing that child into an out-of-home placement. Case files generally provide documentation supporting social worker decisions to remove Indian children from homes and proceed with child custody proceedings. However, documentation issues identified in non-ICWA file reviews relating to better documenting critical decisions, placements, and other case activities also apply to ICWA cases. Supporting documentation may be even more critical for ICWA cases for demonstrating compliance with standards for evidence and reunification efforts.

What Services Did CFSD Provide to the Family Under ICWA?

Both Montana statute and ICWA requires CFSD provide remedial efforts to prevent a removal, and rehabilitative efforts to reunify a family. As with evidentiary standards, ICWA sets a higher minimum level of effort for cases involving Indian children than Montana statutes require for other child protection cases. While Montana statute requires CFSD make “reasonable efforts” to provide remedial and rehabilitative services, ICWA requires “active efforts,” which is a higher standard.

Interviews and case file documentation indicate CFSD personnel recognize the need to consider incorporating Native American culture and customs into case activities. We found social workers accept programming and treatment services offered by tribes or Native American providers. Additionally, family group decision-making conference coordinators provide families opportunities to incorporate spiritual practices or customs into family group conferences. However, in some instances, file documentation provided little information about social worker activities and efforts

to provide services. Because ICWA requires CFSD provide “active efforts” for reunifying Indian families, failure to appropriately document case activities can adversely affect future case management decisions and child custody proceedings.

With Whom Was the Indian Child Placed in Foster Care?

Since the general purpose of ICWA is to preserve Native American families, ICWA also mandates preference for adoptive and foster home placements be granted to an Indian child’s family, other Native American homes, or homes preferred by a child’s tribe.

ICWA recognizes in some instances foster care placements with Native American foster homes may not be practical, possible, or in the best interests of a child. In such instances, the state must demonstrate “good cause” as to why a preferred placement was not used. Bureau of Indian Affairs guidelines note good cause must be due to extraordinary needs of a child or that diligent efforts to find a preferred placement are unsuccessful.

CFSD generally attempts to place Indian children in ICWA-preferred placements. In many cases, CFSD placed Indian children with immediate or extended family, or in homes requested by the parents. However, the division still places many Indian children in non-Native American foster homes. In some cases, social workers may not actively seek out preferred placements, or they may have limited understanding of what constitutes a “good cause” exception. Additionally, CFSD has a limited number of licensed Native American homes, or non-Native American homes approved by tribes. We believe CFSD, with assistance from tribal governments, could improve its training to make some non-Indian foster and adoptive placements more acceptable to tribal governments. According to CFSD, approximately 30 percent of the children in foster care are Native American. Given the substantial number of Native American children in foster care and state and national policy to make active efforts to place Indian children in Native American foster homes, the state has a higher obligation to recruit Native American families as foster parents. To meet the intent of ICWA

Report Summary

and the Montana Constitution, the division needs to further address these areas to improve ICWA compliance.

What Evidence of Supervisory Review of ICWA Cases Exists?

We reviewed ICWA files for documentation of supervisory review. Supervisory activities reported in Chapter III also apply to ICWA cases. Supervision is a critical function to assure social workers manage all cases according to CFSD policies, procedures, and professional standards. We believe ICWA cases demand even more supervisory emphasis because of the higher evidentiary standards and level of effort required to prevent the breakup of Indian families. Our review did not suggest such emphasis is given to ICWA cases.

Training

The fourth area under HJR 32 (paraphrased) reads:

- ▶ Determine the extent to which the training of social workers, county attorneys, and courts is relevant regarding the state and federal provisions pertaining to child protective services.

In this area, our review primarily focused on CFSD personnel because county attorneys and courts are not within the authority of DPHHS. However, CFSD does provide training opportunities to these two stakeholders. The following sections provide details on our findings and recommendations regarding training to these CPS stakeholders.

CFSD Should Set Training Standards and Create a Standardized Training Program

CFSD has a Training Bureau responsible for developing training programs. However, the bureau does not currently use job-related information to determine statewide training needs, develop an ongoing, systematic staff training program, and monitor attendance of training opportunities. Job-related information could be obtained to help develop systematic training programs. For example, if performance appraisals were completed on both supervisors and social workers, this information could be used to identify training needs on a statewide basis. Establishing statewide training programs from this information could help reduce inconsistencies that currently exist in the CPS process.

Report Summary

At this point, there is nothing indicating what constitutes a sufficient amount of training for CFSD staff. This is because CFSD has not established minimum training standards for social workers or supervisors. The National Association of Social Workers recommends agencies have policies in place that focus on training needs of social workers. This includes conducting annual assessments of social worker training needs and establishing a minimum standard of training hours that should be completed. CFSD needs to establish a minimum number of training hours that social workers and supervisors should receive and initiate a central monitoring function to assure training is completed.

County Attorney and District Court Training

We identified inconsistencies in practices and procedures as well as some noncompliance with statutory hearing and timeline requirements throughout the state. One reason for these inconsistencies appears to be a need for more training and awareness of CPS-related issues by some county attorneys and district court judges.

Additional Stakeholder Training is Needed

CFSD has made recent efforts to learn about strengths and weakness of the CPS system by conducting a statewide assessment meeting and offering training for legal professionals. However, we believe the level of emphasis given to training and training attendance by all stakeholders needs to be increased. The division needs to increase communication and coordination regarding training with the Attorney General's Office and the Montana Supreme Court who, respectively, have defacto authority over county attorneys and district court judges.

Other Issues Related to the CPS Process

We also provide information on issues related to the CPS process that do not specifically relate to the HJR 32 questions. Issues were not identified during file reviews but were noted during interviews with numerous stakeholders in the CPS process and reviews of other information. Examples of stakeholders interviewed include department staff, county attorneys, service providers, CASAs/GALs, and tribal officials. Other information reviewed included previous audit reports, other states' information, and materials associated with

Report Summary

attending CPS meetings and conferences. For some sections we provide recommendations to address the issue. In other sections, we just conclude on the issue. Specific areas addressed include:

- ▶ Substantiation Fair Hearing Process
- ▶ Legal Representation for Indigent Parents
- ▶ Maintenance of Uninvestigated Abuse and Neglect Reports
- ▶ Analysis of CFSD Activities and Organizational Focus

Some of the issues noted during our review are the responsibility of county attorneys and/or district courts. We mentioned reorganization of the judicial and legal systems as changes the legislature may want to consider as possibilities for improving consistency. Whether the legislature changes these systems or not, CFSD still can implement the recommendations made in this report to improve the CPS process.

Chapter I - Introduction

Introduction

The Department of Public Health and Human Services (DPHHS) is statutorily designated as the agency responsible for protection of children who are abandoned, neglected or abused. The Child and Family Services Division (CFSD) within DPHHS is assigned responsibility for meeting this statutory mandate. CFSD must respond to reports of child abuse or neglect and provide protective services when necessary. This includes authority to take temporary or permanent custody of a child when ordered by the court. The child protective services (CPS) system is made up of numerous stakeholders which include: CFSD, district courts, county attorneys, parents, and service providers.

House Joint Resolution 32

House Joint Resolution (HJR) 32 passed by the 2001 Legislature requested a performance audit of the CPS system. HJR 32 language states the CPS process should be reviewed to ensure the department applies the law equally statewide. The complete text of HJR 32 is provided in Appendix A. The Legislative Audit Committee approved a performance audit of the CPS system.

Audit Objectives

To accomplish the performance audit, we established objectives based on HJR 32 language. Our objectives included:

1. Determine what child protective services are provided across the state and the extent to which those services are uniform statewide.
2. Review policies and procedures regarding the application of the Indian Child Welfare Act (ICWA) across the state.
3. Determine the extent to which the department's policies and procedures reflect cultural needs and are conducted in a manner that considers cultural practices and language.
4. Determine the extent to which training of social workers, county attorneys, and courts is relevant regarding state and federal provisions pertaining to child protective services.
5. Examine management, personnel, and training needs of the department for child protective services.

Chapter I - Introduction

In addition to the above objectives, we established an objective to provide information to the legislature describing the CPS process.

Audit Scope and Methodologies

The CPS system is a complex process in terms of funding, statutory requirements, and the number and types of entities involved. We reviewed state and federal laws and rules including ICWA and the Adoption and Safe Families Act (ASFA). We also reviewed department policies and procedures related to child protective services. The remainder of this section provides specific details of the methodologies used to conduct the audit.

We gathered background information regarding CFSD organization, activities, and funding sources, including reviewing Legislative Fiscal Division budget/appropriations reports to develop an understanding of sources and amounts of CPS funding. We obtained and reviewed information related to the CPS process including the Guidelines for State Courts for Indian Child Abuse and Neglect Proceedings from the Bureau of Indian Affairs, and the CFSD Deskbook for Montana Judges, County Attorneys, Caseworkers, and Attorneys.

Planning interviews with CFSD personnel were completed to discuss roles and responsibilities, the CPS process, and ICWA. Interviews were held with the CFSD Administrator, various bureau chiefs, and program personnel including the ICWA Coordinator. We traveled to offices within all five service regions of the state and interviewed various personnel including regional administrators, social worker supervisors, social workers, family resource specialists, permanency planning specialists, and family group decision-making coordinators.

We also obtained input about CPS from officials outside the department. We interviewed judges, county attorneys, attorneys from the Montana Department of Justice, court appointed special advocates, guardian ad litem, in-home service providers, members of the legislature, tribal officials, and professionals from the private sector involved with Native Americans. We also talked with families involved in the CPS process.

Chapter I - Introduction

We reviewed CFSD case files to familiarize ourselves with their content and level of documentation. File reviews allowed us to develop a better understanding of department activities, court proceedings, and services provided to families. In addition, we reviewed files maintained by the department regarding complaints received about the CPS process and subsequent follow-up.

We attended training sessions and conferences related to CPS. These included METNET (Montana Educational Telecommunications Network) training to discuss legislative changes that occurred during the 2001 session, ICWA training for department staff, and an ICWA conference. We observed portions of the November 2001 MCAN (Montana Child Abuse and Neglect) training relating to ICWA and legal aspects of the CPS system. We attended several CPS court hearings to observe proceedings and the decision-making process.

We reviewed prior audit reports issued by the Legislative Audit Division (LAD) including Child Protective Services Program (89P-29), Foster Care Facility Licensing and Other Related Issues (93SP-03), and Child and Adult Protective Services (CAPS) System (97DP-06). We reviewed the LAD hotline log for calls relating to CPS activities and potential concerns identified by callers.

Framework of Our Review

After completing planning work, the main focus of our fieldwork involved in-depth file review and follow-up interviews with CFSD Central Office and field personnel. In all, we reviewed a total of 60 randomly selected CPS files, 35 general cases and 25 ICWA cases. The file reviews concentrated on compliance and documentation related to specific areas of the CPS process we determined were high risk. We developed a file review guide, using these specific areas, to assist in examining cases. These reviews are discussed in detail in chapters III and V.

We visited all five CFSD regions in the state. Our regional trips included visits to several CFSD offices within each region. The following areas were visited during planning or fieldwork or both:

Chapter I - Introduction

- ▶ Region I: Miles City, Glendive, Sidney, Wolf Point, and Colstrip
- ▶ Region II: Great Falls, Shelby, Cut Bank, Havre, and Glasgow
- ▶ Region III: Billings, Roundup, Lewistown, and Hardin
- ▶ Region IV: Helena, Butte, and Bozeman
- ▶ Region V: Missoula, Kalispell, Polson, Thompson Falls, Libby, and Superior

The other area of concentration for fieldwork was contact and follow-up with tribal representatives. We provided notification of our performance audit to officials from the following eight Montana tribal nations:

- 1) Blackfeet
- 2) Crow
- 3) Fort Belknap
- 4) Fort Peck
- 5) Flathead
- 6) Northern Cheyenne
- 7) Rocky Boy's
- 8) Little Shell Band of Turtle Mountain

We received responses from six of the eight tribal nations listed above. We interviewed tribal officials and social service personnel regarding the CPS system and level of communication and coordination with DPHHS.

Audit Scope Exclusions

After reviewing planning information, we focused our efforts on areas correlating to HJR 32, and within these areas, processes and issues with the highest risk. As a result, there are areas we excluded from the scope of the audit. The following provides a brief summary of these areas.

- ▶ Foster care licensing and monitoring – We did not specifically review the process for licensing facilities and monitoring foster care activities. We identified this as a potential area for further study which is discussed later in this chapter.
- ▶ Permanency – Our scope was limited to examining compliance with specific mandates related to permanency and ICWA placement preferences.

Chapter I - Introduction

- ▶ Contracted services – The audit did not include a review of contracted services. These services include contracted attorneys, family based services, and in-home services.
- ▶ Workload – Officials within CFSD believe lack of resources is a cause for some CPS issues. Due to limited information, audit scope excluded a detailed review of DPHHS workload. CFSD resources are discussed further in subsequent chapters.
- ▶ Funding mechanisms/issues – We did not complete a detailed review of funding related to the CPS system, including Title IV-E and IV-B funding and utilization. LAD personnel conduct a financial-compliance audit of the department every two years, and this audit normally includes a review of funding. However, this area has potential for further review and is discussed later in this chapter. Additionally, we did not specifically examine the decisions associated with the payment of expert witness fees and publication costs of searching for non-custodial parents. By statute, these fees and costs should be borne by the district courts, but they are now routinely paid by CFSD.
- ▶ Federal review issues – In order to avoid duplication, we did not audit those areas planned for review by the U.S. Department of Health and Human Services in 2002. These planned areas include interviews with parents and children and foster care providers. We observed various meetings for gathering input from stakeholders in the system. The federal review is discussed in more detail later in this chapter.
- ▶ CAPS – While we used information from the CAPS computer system during our review, we did not complete audit work of any part of the system, nor did we verify the validity and reliability of data compiled by the system.

Management Memorandums

During the audit we identified issues that were not addressed with audit recommendations, but still warrant management attention.

These issues are:

- ▶ Inter-office communication and coordination – Occasionally, case management responsibilities shift from one local CFSD office to another. Reasons for this vary but may include the family moving to another county or the best interests of the child require placement in another county. No matter the reason, case management shifts or is shared between social workers located in different CFSD offices. When this occurs, social workers must communicate and coordinate with each other. We noted

Chapter I - Introduction

difficulties with communication and coordination between CFSD personnel located in different offices caused some delays in the CPS process. CFSD management needs to enforce CFSD policy to help improve coordination and communication between social workers located in different CFSD offices.

- ▶ Unfounded reports – If an investigation of an abuse or neglect report determines abuse or neglect of a child did not occur, the report is classified as unfounded. During our review, we noted one instance where the name from an unfounded report was not removed from the CAPS system and the hard-copy file had not been destroyed. According to section 41-3-202(5)(b), MCA, if a report is determined to be unfounded, the records concerning the report and investigation are to be destroyed within 30 days. CFSD policy states the CAPS system is designed to automatically purge unfounded reports every month. All identifying information is purged, but the statistics remain within the system. It appears CFSD needs to establish a process to verify all unfounded case records (hard copy and electronic) are properly destroyed and purged.
- ▶ Best Management Practices – As part of our review of social worker activities, we identified individual processes, procedures, forms, etc., employed by individual staff or entire offices, that could address deficiencies we noted in other offices. These “best management practices” appeared to provide solutions and/or preferred alternatives which could improve consistency of CPS practices in the areas of documentation, supervision, and overall efficiency/effectiveness. We provided a listing of these identified best management practices to CFSD management and have included examples in Chapters III and V.

Federal Review of CPS Activities Being Completed

In January 2000, the U.S. Department of Health and Human Services established new child protection regulations to improve outcomes for abused and neglected children, children in foster care, and children awaiting adoption. The new regulations hold states accountable for services to at-risk children with a new results-oriented approach in federal monitoring of child welfare programs. Under the new regulations, states are being reviewed for compliance with federal requirements for child protective services, foster care, adoption, independent living, and family preservation and support services under title IV-B and IV-E of the Social Security Act. The review covers two areas:

Chapter I - Introduction

- ▶ Outcomes for children and families in terms of child safety/protection, permanency, and well being of the child and family.
- ▶ The administration of state programs that directly affect the capacity to deliver services leading to improved outcomes. This will include reviewing areas such as statewide information systems, case review systems, staff training, agency responsiveness to the community, and foster care and adoptive parent recruitment.

The federal review of Montana started with an analysis of CAPS data and a statewide assessment of program strengths and weaknesses. In August 2002, a team of reviewers from the U.S Department of Health and Human Services, CPS program staff from other states, and CFSD staff conducted an onsite review of Montana's child protective services system. The team reviewed 50 cases from three areas of the state including Billings, Great Falls, and Helena.

CFSD Has a Wide Range of Responsibilities and Obligations

The CFSD is responsible for protection of children who are abandoned, neglected or abused. There are numerous state and federal mandates relating to child protective services and there is a growing demand for these services to be measured in a results-oriented fashion. In response to these demands, CFSD in partnership with other stakeholders has initiated various programs and established additional management controls to improve outcomes for abused and neglected children. Some of these programs include: family group decision-making conferences, in-home intervention and assistance services, and expanded emphasis on family maintenance and re-unification when there is an out-of-home placement. Additional management controls include establishment of the Centralized Intake function and initiation of various measures to help assure compliance with various federal mandates regarding ASFA and ICWA.

Our review of CFSD activities indicates division personnel are motivated to keep children safe, and where possible, families strong. Our file reviews suggest social workers and other CFSD personnel

Chapter I - Introduction

must often work in challenging circumstances in which they routinely address child abuse and neglect issues which are stressful not only for the children and families, but also for the social workers. The social workers can end up in adversarial positions with parents. The division is often limited in providing descriptions of their activities and the reasons behind them due to confidentiality requirements. As a result, the public's ability to fully understand CFSD's contributions to the safety of children is often not realized.

Despite the challenges CFSD personnel face and the ongoing improvements initiated, we believe there are additional areas for improvement. These are discussed in Chapters III, IV, V, and VI. Additionally, there are some child protective service areas outside the scope of our review that could potentially benefit from further study. The following section discusses those areas.

Potential Issues for Further Study

Foster Care Program

During the course of this audit, we identified several issues with potential for further study.

Foster care, or substitute care, is full-time care of youth in a residential setting when they are removed from or are without the care and supervision of their parents or guardians. Section 52-2-601, MCA, provides for a system of substitute care, and CFSD is responsible for licensing all substitute care facilities. During the audit, we identified a number of issues related to CFSD's foster care program.

- ▶ Foster parent training – We noted inconsistencies in CFSD's application of foster parent training requirements, including:
 - Limited training opportunities for new foster parents in some areas, which may limit the availability of foster homes and discourage some persons from becoming licensed foster care providers.
 - Minimal assurance foster parents meet continuing education requirements. CFSD stated the training standard is not regularly enforced, and in some instances CFSD personnel have violated policy by continuing to place children with foster parents who have not maintained training requirements.
 - Consistency in training varies among regions or offices.

Chapter I - Introduction

- ▶ Limited emphasis on recruiting foster parents – CFSD has not developed a statewide recruiting strategy. Additionally, CFSD personnel stated limited funding and conflicting staff duties restrict recruiting activities.
- ▶ Conflicts between CFSD personnel and foster parents – Allegations include poor communication between CFSD personnel and foster parents regarding:
 - o Information about children's problems.
 - o Utilization of some foster homes.
 - o Lack of responsiveness to foster parents' requests for assistance.
 - o Licensing delays.

A Memorandum of Understanding and a conflict resolution process was established between CFSD and the Montana State Foster and Adoptive Parent Association in June 2002.

CFSD relies heavily upon foster families to provide care for children removed from their parents. These potential issues may adversely affect CFSD's ability to recruit, retain, and meet its mission to provide appropriate care to children. The LAD completed a performance audit of foster care facility licensing in 1993 (93SP-03), which identified similar issues. Another performance audit specifically concentrating on the noted areas could further evaluate the impact of foster care administration on the CPS process.

Child and Adult Protective Services System

As mentioned previously, the department uses a computer system called CAPS to compile information on child and adult protective services. During our review, we identified potential concerns with CAPS reliability. We also received comments on the usefulness of CAPS from various CFSD personnel, both Central Office and field staff. Concerns/comments included the ability and time to generate reports and statistics, accuracy and completeness of data, and difficulties with using the system. The LAD completed an Information System audit of CAPS in 1997 (97DP-06). This review concentrated on general and application controls, but issues similar to those noted above were identified in the audit. A performance audit could review the overall usefulness and accuracy of CAPS.

Chapter I - Introduction

management information in relation to documenting and monitoring child abuse and neglect cases.

Utilization of Title IV-E and IV-B Funding

A major source of federal funds specifically related to child protective services comes from the Title IV-E Foster Care and Adoption Assistance program. Another source of federal funding for the division comes from the Title IV-B Child Welfare Funds and Family Preservation Grant. Our audit did not include a review of CFSD funding; however, we did receive input regarding the potential to increase utilization of federal funding for non-traditional CPS activities. For example, federal funding could potentially be used to more comprehensively cover county attorney costs for prosecuting cases or to provide legal counsel for parents. A review of these and other possibilities could determine the potential for increased utilization of available federal funding.

Report Organization

The remainder of this report is separated into five chapters. Chapter II provides general background information on the CPS system. Chapters III, IV, and V outline findings and recommendations related to CPS case management, including ICWA cases. Finally, Chapter VI provides findings and recommendations regarding training and an overall summary and conclusion to our review of child protective services.

Chapter II - Background

Introduction

Section 41-3-101, MCA sets public policy for the State of Montana related to child protective services. Montana's policy is to ensure all children have a right to a healthy and safe childhood in a nurturing permanent family or in the closest possible substitute. It also provides for protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. Policy recognizes the sanctity of the family will not be violated unless there is reason to believe the safety and health of the child is at risk.

The Department of Public Health and Human Services (DPHHS) is designated by law as the "lead agency" to provide child protective services (CPS). While providing these services is an important department function, it is also controversial and adversarial because the services often involve difficult, life changing decisions that may include children being removed from their home and placed in foster care. Due to the nature of CPS services, numerous entities are involved in the process to provide a system of checks and balances. This has created a complex system for providing needed services to children and their families. This chapter provides an overview of the CPS system and the entities involved in the process.

Federal and State Laws

Federal and state laws play a major role in the CPS process. Statutes outline the provision of CPS activities, services and timelines. Statutes also provide guidance on what should be accomplished with children and families when they enter the CPS system. The following sections summarize federal and state laws related to child protective services and how they impact the process.

Federal Laws Establish the Foundation for CPS Services

Federal laws have a direct impact on CPS services at the state level because they establish the foundation for requirements states must meet when providing child protective services. These requirements generally relate to timing of legal proceedings in CPS cases, making reasonable efforts to reunite families, and achieving permanent placements for children when courts determine reunification is not possible.

Chapter II - Background

Indian Child Welfare Act

Congress enacted the Indian Child Welfare Act (ICWA) in 1978 to protect the interests of Native American children and tribes. ICWA was the first statute to protect an ethnic group's interest in a child. ICWA promotes stability and security of Native American tribes by establishing minimum federal standards for CPS cases involving Native American children.

Adoption and Safe Families Act

The Adoption and Safe Families Act (ASFA) was enacted in November 1997 to promote safety and permanence for children who have been abused or neglected. It attempts to address concerns of children either being left in foster care too long or returned to unsafe family situations. ASFA includes provisions that require or provide incentives for states to change policies and practices to better promote children's safety and timely adoption or other permanency options.

State Law Directs Montana CPS Activities

Title 41, chapter 3, MCA, gives the department authority to become involved in abuse and neglect cases. These laws define the department's jurisdiction in these cases and describe the proceedings directing abuse and neglect cases.

Child and Family Services Division

The Child and Family Services Division (CFSD) is the entity within DPHHS responsible for providing child protective services. Its mission is to "keep children safe and families strong." The CFSD administers a variety of services to help protect children who are abused or neglected. These include child protective services, foster care, adoption, family preservation and support, and referral to community and private sector service providers.

Division Funding, Organization, and FTE

CFSD is funded by a combination of state General Fund, state special revenue funds, and federal funds. The major source of federal funds specifically related to child protective services is the Title IV-E Foster Care and Adoption Assistance. Other federal funding for the division includes Temporary Assistance for Needy Families (TANF), Social Service Block Grants, and Title IV-B Child Welfare Funds and Family Preservation Grants. Each of the last

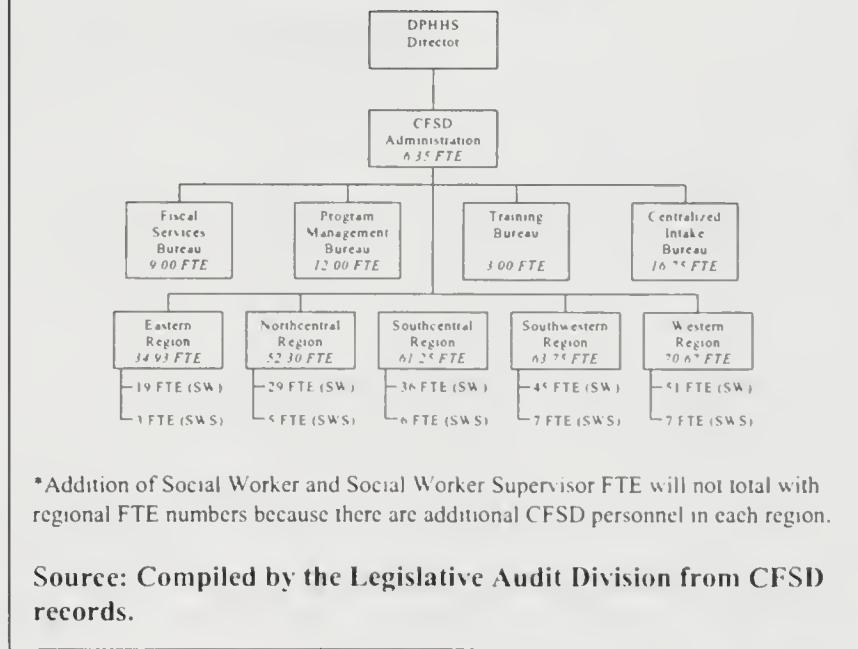
Chapter II - Background

three fiscal years (FY99 to FY01) the division expended over \$22 million dollars per year for child protective services.

CFSD is headquartered in Helena with a division administrator managing operations. Division headquarters (central office) is responsible for duties such as establishing division policies and procedures, budgeting and allocating resources, and developing staff training programs. Regional administrators direct CFSD operations in each region. Regional offices are located in Billings, Great Falls, Helena, Miles City, and Missoula. CFSD staff located in most counties responds to reports of potential child abuse or neglect. Staff located in regional and local offices who are directly involved in CPS cases include social workers, family resource specialists, permanency planning specialists, family group conferencing coordinators, and their supervisors. CFSD is currently allocated 330 FTE. Approximately 270 of the division's employees are located in field offices. The following chart shows the organization of the CFSD.

Figure 1

CFSD Organizational Chart



Chapter II - Background

Numerous Stakeholders are Involved in the CPS Process

In addition to CFSD, there are a number of stakeholders involved in the CPS process. The general role of many of these entities is to provide checks and balances in the child protective system. This includes reviewing department decisions and actions taken related to child abuse and neglect reports. The stakeholders routinely involved in the process include:

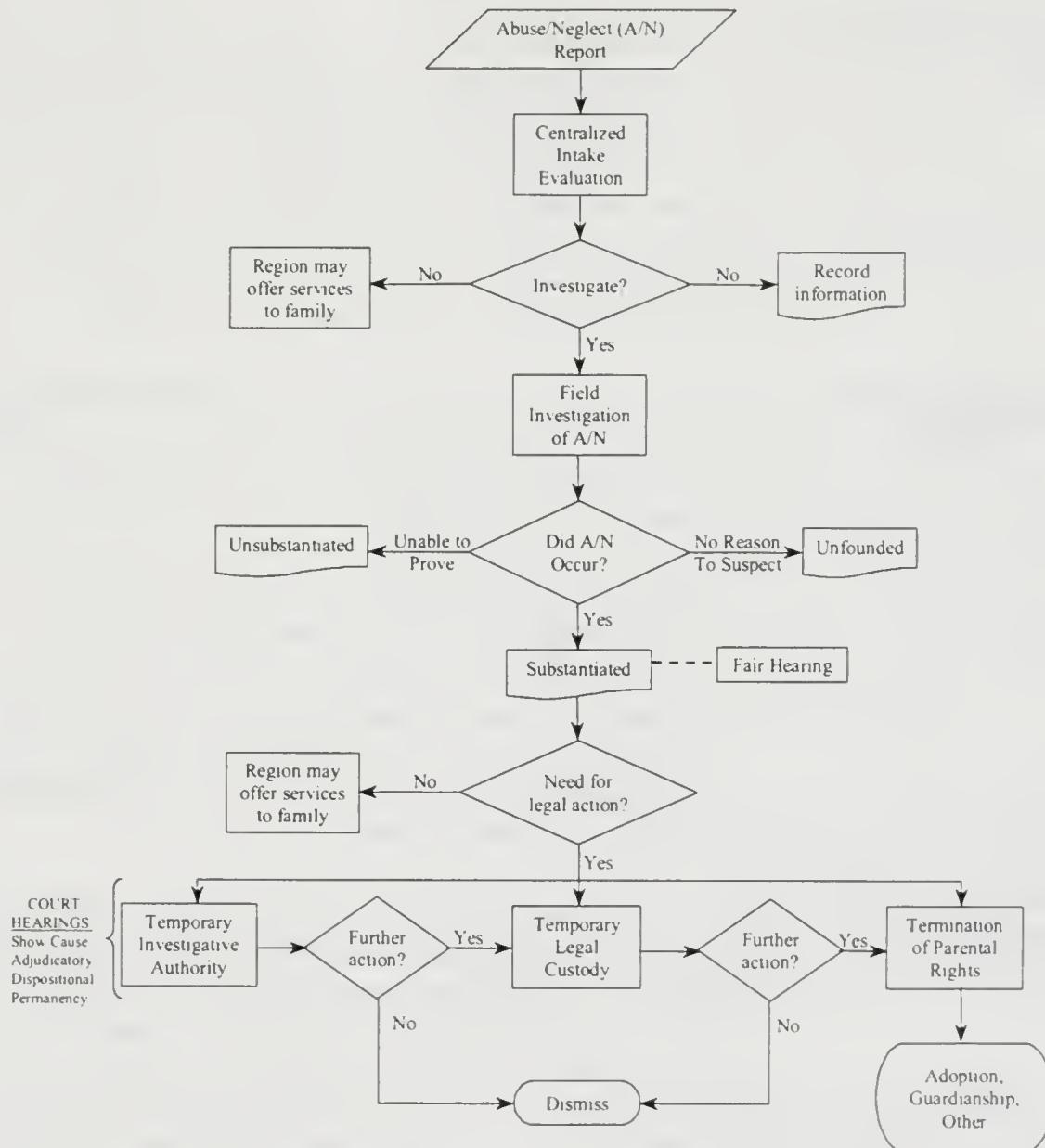
- ▶ Family Members
- ▶ Law Enforcement Agencies
- ▶ Foster Care Providers
- ▶ County Attorneys
- ▶ District Courts
- ▶ Child Advocates
- ▶ Expert Witnesses
- ▶ Tribal Officials/Bureau of Indian Affairs
- ▶ Child Protection Teams
- ▶ Service Providers
- ▶ Parents' Attorneys
- ▶ Child Protection Unit
- ▶ Foster Care Review Entities

The CPS Process

This section provides an overview of the CPS process and the activities of the parties involved. It discusses how potential child abuse or neglect is reported, department procedures for investigating reports, and legal steps and statutory requirements for department intervention into family settings. The following figure provides a general illustration of the CPS process.

Chapter II - Background

Figure 2
General CPS Process



Source: Compiled by the Legislative Audit Division.

Chapter II - Background

As the figure shows there are a number of steps involved in the CPS process. The following sections describe each step and how they relate to the CPS process.

The Report of Abuse or Neglect

The CPS process is initiated by a report of suspected child abuse and/or neglect to CFSD. Anyone may report suspected child abuse or neglect, but state law mandates reporting by certain individuals. Mandatory reporters of child abuse and neglect include medical and health professionals, school officials, childcare and foster care providers, law enforcement officials, members of the clergy, guardians ad litem, court-appointed special advocates, social workers, and entities providing direct services to children.

The Centralized Intake Reporting System

Until recently, all reports of suspected abuse and neglect were made to staff in local CFSD offices in order to determine the extent of investigation needed. However, the 2001 Legislature approved funding for CFSD to establish a Centralized Intake (CI) Bureau, which began operations on January 1, 2002. The CI Bureau receives reports of suspected child abuse and neglect in the state via a toll-free phone number. The department implemented the CI function to improve consistency, standardize information, and potentially increase social worker time available for work on abuse and neglect cases. Reports of potential abuse and neglect made to local CFSD offices are referred to CI staff to make a determination on the level of response required.

Child Abuse and Neglect Investigations

If CI staff determines a report should be investigated, a social worker typically investigates the circumstances surrounding the allegations of abuse and/or neglect. However, county attorneys and law enforcement officers may be involved in the investigations. The investigating social worker is responsible for evaluating family circumstances and deciding on appropriate actions to protect the child. During the investigation, social workers have the right to interview the child and can access any of the child's relevant hospital or medical records. If a child is interviewed there is no requirement under Montana statute that parents be notified prior to the interview. Statute also requires the department take steps to protect the identity

Chapter II - Background

of any reporter of abuse or neglect or any other person whose safety may be endangered.

Social workers use Montana law and CFSD policy as criteria to determine whether abuse or neglect occurred. Following investigation, if the social worker has reasonable cause to suspect a child has suffered abuse or neglect, protective services may be provided to the child and family. If there is reason to believe a child is in immediate or apparent danger of being harmed, statute allows the child or children to be immediately removed from the home. In cases where physical or sexual abuse could result in criminal charges, law enforcement officials are involved.

Substantiations of Abuse or Neglect

If during the investigation evidence indicates it is more probable than not the alleged abuse or neglect actually occurred, the report is considered “substantiated.” If social workers are unable to prove if abuse or neglect occurred from the evidence gathered, the report is considered “unsubstantiated.” When an investigation is completed and the evidence shows there was no reason to suspect abuse or neglect occurred, then the report is “unfounded.” When a report of abuse or neglect is determined to be unfounded, state law requires all records related to the report be destroyed within 30 days.

Fair Hearing Process

If the department substantiates abuse or neglect allegations, CFSD policy requires the department to notify individuals in writing and explain how the department came to its conclusion. Since a substantiation of abuse or neglect can affect an individual’s reputation and ability to obtain employment in various childcare fields, the individual can contest the substantiation charge against them in a fair hearing.

The fair hearing process consists of two different components. The first component consists of a review by the CFSD substantiation review panel. The review panel consists of two employees from CFSD central office and five social worker supervisors (one supervisor from each region). When someone requests a fair hearing, each member of the panel receives a copy of the case file for

Chapter II - Background

review. The panel discusses the case and makes a decision on whether they believe evidence exists to uphold the substantiation. If the review panel reverses a substantiation decision, CAPS is updated to show the allegations of child abuse or neglect are unsubstantiated. If the review panel upholds the substantiation, the case proceeds to the second component, a fair hearing. The fair hearing provides the department and the claimant the opportunity to present evidence on why a substantiation of child abuse or neglect against an individual should be upheld or overturned. The fair hearing officer reviews evidence presented and rules on the validity of the substantiation decision. If upheld, the substantiation of child abuse or neglect remains on the department's database. If overturned, the department's database is updated to show the allegation of child abuse or neglect is unsubstantiated. No matter what the outcome of the fair hearing the court may still review the safety of the child.

Intervention Into a Family Setting

Whenever CFSD intervenes in a family setting as a result of child abuse and/or neglect allegations, a legal basis must exist for continued department actions. The department requests the county attorney file a child abuse and neglect petition with the district court. This initiates the judicial process whereby CFSD receives either judicial approval or denial of its actions regarding the child and family. The type of relief granted by the court depends on the action sought by CFSD. This section describes the legal aspects of child abuse and neglect proceedings.

Immediate Protection and Emergency Protective Services

When social workers have reason to believe a child is in immediate or apparent danger, they have statutory authority to make an emergency removal of the child from the parent's home. If an emergency removal is done, a petition for immediate protection must be filed with the court within two working days of the removal. If sufficient evidence exists justifying the emergency removal of the child, then the court issues an order of immediate protection. If the petition is not filed within two working days or there is not sufficient evidence to support the removal, the child must be returned home.

Chapter II - Background

Temporary Investigative Authority

The court can be petitioned for authority to conduct investigations into allegations of child abuse and neglect. Temporary Investigative Authority (TIA) provides a means to obtain court approval for social workers to intervene into a family setting for purposes of investigating and evaluating a course of action to best serve the interests of the child. A TIA cannot be issued for a period longer than 90 days. Prior to October 1, 2001, TIAs could be extended for an additional 90 days.

Temporary Legal Custody

A petition seeking Temporary Legal Custody (TLC) is a request for the court to grant the department the right to temporarily take legal custody of a child. The primary purpose of TLC is to give the department authority to remove a child from a situation that is not in the child's best interests. It also gives the department authority to provide services to the parents and child. An order of TLC to the department limits the custodial rights of the parent(s) while the court order is in effect. An order for TLC remains in effect for a maximum of six months; however, the court may issue one six-month extension. The TLC can be further extended by court order under special circumstances.

At the TLC stage of the process a treatment plan is developed. A treatment plan addresses and tries to resolve problems that resulted in a child having been abused or neglected. Treatment plans are typically court ordered and incorporated into the TLC timeframe.

Termination of Parental Rights and Permanent Legal Custody

A petition for Termination of Parental Rights (TPR) is appropriate in those situations where the parents are unfit, unable, or unwilling to provide sufficient care for the child and it is in the child's best interests to be placed in a more desirable permanent setting. After TPR is ordered, the court may transfer permanent legal custody of the child and right to consent to the child's adoption to the department, a licensed adoption agency, or to another individual approved by the department.

Evidentiary Standards

CFSD must provide a court with evidence demonstrating the need for removing a child from a home. The burden of proof required

Chapter II - Background

under Montana law for CPS cases ranges from “probable cause” to obtain an order for immediate protection and emergency services to “clear and convincing” evidence for termination of parental rights. ICWA requires a higher burden of proof for cases involving Native American children. There must be “clear and convincing” evidence for all department actions except termination of parental rights, which requires evidence “beyond a reasonable doubt” the termination would be in the child’s best interests.

Required Judicial Hearings in the CPS Process

Depending upon the child abuse and neglect proceeding, four types of judicial hearings are required: show cause, adjudicatory, dispositional, and permanency plan. Each hearing must be held within statutory timeframes and specific judicial findings are required at the conclusion of each hearing. Hearings can be combined if the requirements of each hearing are met.

Show Cause Hearing

The show cause hearing is the first hearing held on a child abuse and neglect petition. The department has the burden of presenting evidence to support the relief requested in a petition (immediate protection, TIA, TLC, etc.) at the show cause hearing. By law, the parents must also be provided an opportunity to provide testimony at the show cause hearing. At conclusion of the show cause hearing, the court must make a finding:

- ▶ Whether the child should be returned home or remain in foster care.
- ▶ Why it would not be in the child’s best interests to remain with the parents.
- ▶ Whether the department made reasonable efforts to avoid protective placement or made it possible to safely return the child home.

Prior to October 1, 2001, the show cause hearing had to be conducted within 20 working days of filing an initial child abuse and neglect petition. Due to changes made during the 2001 Legislative Session, the hearing must now be conducted within 10 days, excluding weekends and holidays. The initial hearing for an ICWA

Chapter II - Background

case may not be held prior to 10 days after parental, tribal, or BIA receipt of notice of the hearing. ICWA also provides for a 20-day extension at the request of the parent, custodian, or tribe.

Adjudicatory Hearing

A court can make a determination at the adjudicatory hearing to designate a child as a “youth in need of care” if a judge finds evidence showing a child was abused or neglected. Prior to adjudicating a child as a youth in need of care, the court must issue written findings concerning:

- ▶ Whether allegations have been proved or admitted.
- ▶ Whether a legal basis exists for continued court and department intervention.
- ▶ Whether the department made reasonable efforts to avoid protective placement or made it possible to safely return the child home.

The court may also order requirements such as supervised family visitation with the child, medical examinations, or counseling of the child. This hearing must be held within 90 days of the show cause hearing, unless the two hearings are combined. Exceptions to this time limit are only allowed in cases involving newly discovered evidence, unavoidable delays in notification of parties, or unforeseen medical emergencies.

Dispositional Hearing

Dispositional hearings must be held within 20 days of the adjudicatory hearing. The court hears testimony regarding reasonable efforts made by the social worker to either prevent foster care placement or reunify the child and parents. The court may enter a judgment making any of the following dispositions to protect the child:

- ▶ Permit the child to remain with the parents.
- ▶ Grant limited emancipation to youths at least 16 years of age.

Chapter II - Background

- ▶ Transfer temporary legal custody to the department, a licensed child-placing agency, a relative or other individual recommended by the department.
- ▶ Order a parent to undergo medical or psychological evaluations, treatment, counseling or other care/treatment.

Permanency Plan Hearing

Both state law and ASFA require a permanency plan hearing. The purpose of this hearing is to receive judicial approval for a permanency plan. The court reviews the permanency plan, along with any supporting information, and decides if the plan is in the child's best interests and whether the social worker made reasonable efforts to achieve permanency. State law allows four permanency options: reunification with the parents; adoption; appointment of a guardian; or a planned permanent living arrangement for the child.

These hearings must be held within the following timeframes:

- ▶ Within 30 days of a court determination that reasonable efforts to provide preservation or reunification services are not necessary.
- ▶ No later than 12 months after an initial court finding the child was abused or neglected or 12 months after the child's first 60 days of removal from the home, whichever comes first.
- ▶ Within 12 months of the initial permanency plan hearing and every 12 months thereafter until the child is permanently placed.

Reports of Abuse and Neglect

The following table illustrates the division's statewide child abuse and neglect reports for fiscal years 1998 through 2001.

Chapter II - Background

Table 1
Reports of Child Abuse and/or Neglect
FY 1998 through FY 2001

	FY 1998	FY 1999	FY 2000	FY 2001
Reports	10,083	9,929	10,171	9,703
Substantiated	1,323	1,200	1,236	972
Unsubstantiated	7,186	7,378	7,204	7,038
Indicated*	333	276	311	261
Closed Without Finding**	690	612	649	628
Other***	465	319	343	351

*Indicated --

Maltreatment occurred, but the perpetrator of the maltreatment is not identified under MCA as a "person legally responsible for the welfare of a child." For example, an uncle commits an act of sexual abuse while visiting his niece. Also applies when the perpetrator is unknown.

**Closed Without Finding --

Unable to locate, family left the area before the investigation was completed, or investigation began but was never completed due to court order, administrative directive, etc. No determination made.

***Other --

Includes "Insufficient Information to Warrant an Investigation" (report information does not indicate suspected abuse or neglect), and "Unfounded" (abuse/neglect as defined by law did not occur – used when there is no reason to suspect abuse/neglect occurred).

Source: Compiled by Legislative Audit Division from department records.

Examples of CPS Cases

The following are child protective services cases selected for review by the Legislative Audit Division. The examples represent the types of cases we examined. The purpose of presenting these examples is to provide the reader with a sense of the cases being addressed by CFSD social workers.

Case #1

This was initially reported as a physical neglect case. Police officers were investigating a possible family member assault. They found a highly intoxicated woman in her home with a boyfriend and a two-month old baby. As a result of their investigation, they arrested the

Chapter II - Background

boyfriend on an outstanding warrant and determined the woman who was the mother of the child was in no condition to provide appropriate childcare. A CFSD social worker was called and the child was subsequently placed in foster care for the remainder of the night. It was also determined the mother's other child who was older, was staying with a paternal aunt.

Investigation by the social worker the next morning determined there had been several referrals regarding the mother dating back four years regarding neglect of the older child who had a different father. The social worker's investigation also determined the paternal aunt with whom the older child was staying had a criminal history. The social worker met with the mother the morning following the baby's removal to evaluate her status. Based on the investigation and interview with the mother the social worker chose to continue the foster care placement for the baby and to remove the older child from the home of the paternal aunt and place him in foster care. The social worker determined neither father of the children was available as a placement possibility. The social worker subsequently filed an affidavit for Temporary Legal Custody (TLC) with the county attorney. An order granting Temporary Investigative Authority (TIA) was signed by a judge two days after placement of the children in foster care. The change to TIA was done as part of an agreement between the county attorney and defense counsel for the parents. The birth mother signed a voluntary treatment plan. As a result, the children were returned to the mother.

Over the course of the next few months, the social worker worked with the mother on the various treatment plan requirements and monitored the safety of the children. However, the mother continued to have referrals against her for negligence and abuse regarding the youngest child. Apparently the older child was living with the paternal grandparents in another state. Approximately seven months later, the mother was arrested and jailed for DUI and child endangerment for having the baby in a car she wrecked. As a result, the baby was again removed from the home. An affidavit seeking Temporary Legal Custody was filed with the court. A hearing on the

Chapter II - Background

TLC was delayed because the mother could not be found and there was a pending paternity test because questions arose regarding the baby's father. A TLC was granted approximately four months after the TLC petition was filed.

A new treatment plan developed by the social worker indicated in the interim the mother had three DUIs in less than three months and had also contracted the Hepatitis C virus. It also noted the mother had not seen the baby since removal four months earlier. The treatment plan provided for a chemical dependency evaluation and other requirements when/if the mother could be located. Subsequent investigation and testing determined there was actually a different father for the baby than the one initially identified by the mother. This father was contacted and the social worker was working with him to assess parental fitness/willingness. Due to the inability to locate the mother, the social worker began proceedings to seek Termination of Parental Rights by the mother. This proceeding was initiated approximately 18 months after initial removal of the baby from the mother's home.

Case #2

According to the documentation there has been social service agency involvement with this family going back seven years. There are substantiated incidents of neglect, abuse, and abandonment. Prior to the instant circumstance, there were three separate temporary removals of the four children from the mother. Since the family moved to their present location, there have been 13 visits with the family regarding referrals about neglect and abandonment. The mother is alleged to be an alcoholic who often leaves her children unattended and who when drinking can become physically abusive to them. The mother is a twice-divorced Native American who is presently single. At the time of our review, she was approximately 16 weeks pregnant, but apparently was uncertain of the identity of the father.

The social worker found the mother intoxicated during one of her visits and the mother was determined to be incapable of taking care of her children in her current condition. The social worker, in consultation with her supervisor, decided to remove the children. An

Chapter II - Background

affidavit and petition was filed with the court recommending Temporary Investigative Authority. A TIA was granted and further hearing dates were set. The documentation indicates the children were subsequently placed with a maternal aunt within a few days of their removal. Letters were sent to several Native American tribes and the Bureau of Indian Affairs due to the uncertainty of the mother and father's tribal affiliations. While preliminary information suggested the children were not enrolled or enrollable in any of tribes contacted, the status of at least one of the children had yet to be determined.

At the time of the file review, the mother was involved in an outpatient drug and alcohol program and attending AA meetings. She was also seeking employment. Two family group decision-making conferences had been held to work on reunification of the children and mother. At the time of our review, the TIA period was ending and it was not determined whether the social worker would seek a TLC due to the uncertainty of the mother completing all of the TIA requirements within the established timeframe. Whether the mother is successful in completing the treatment plan requirements will also likely determine if she will be able to retain custody of the unborn child as well.

Chapter III - General CPS Process

Introduction

The child protective services (CPS) process requires Child and Family Services Division (CFSD) personnel, county attorneys, and courts to make numerous decisions during the course of a case. Since these decisions can significantly impact children and families, they are “critical” decisions. Critical decision-making starts with a report on suspected abuse or neglect and continues throughout the process.

This chapter discusses our findings and recommendations regarding the CPS process. We selected a sample of files to review in each CFSD office visited. Our review concentrated on examination of uniformity of practices, which is emphasized in House Joint Resolution (HJR) 32. A noted issue may be related to one file or numerous files. However, unless otherwise stated, each issue was identified in several files, often in various locations throughout the state. The issues are grouped into the following general topic areas:

- ▶ Statutory compliance.
- ▶ Case file documentation.
- ▶ Services provided.
- ▶ Foster care placements.
- ▶ Supervisory review.

Is There Compliance With Statutory Requirements?

This section relates to statutory requirements for CPS proceedings. This includes, but is not limited to, “critical” decision areas such as emergency protective services, show cause hearing, temporary investigative authority (TIA), temporary legal custody (TLC), and termination of parental rights.

The division is partially responsible for ensuring critical decision-making complies with state and federal statutes and meets the best interests of children involved in the CPS process. However, the most significant portion of the responsibility for assuring compliance with CPS laws lies with county attorneys and the district court.

Inconsistencies and Noncompliance Identified

We identified inconsistencies throughout the state and instances of statutory noncompliance where the CPS process was delayed or timelines were not met. Specific details on statutory requirements are provided in Chapter II. We noted some evidence of

Chapter III - General CPS Process

noncompliance during the file review. The noncompliance was in different areas (i.e. one file did not comply with a specific timeframe while another file did not comply with a hearing requirement).

There are three entities responsible for making critical decisions that affect compliance with statutory requirements: 1) district courts, 2) county attorneys, and 3) CFSD. The following are noted consistency and compliance issues. Where applicable the responsible entity is identified with the issue.

- ▶ Affidavit Versus Report To Court – The social worker completes and files a document with the county attorney requesting a petition for action, such as TIA or TLC. We noted variations in the type and format of the document used by CFSD personnel. Some personnel use an affidavit while others write a “report to court.” This often results in variations in evidence provided to the court. According to CFSD management, a report to court was used in the past, so use of this format apparently carries over from past practice. However, we also noted some district judges require a report to court format rather than an affidavit. In addition, statutory language has created some confusion about which format to use. Statute referring to abuse and neglect petitions indicate a petition must be accompanied by an affidavit. At the same time, statute regarding petitions for immediate protection and emergency protective services allow submission of either an affidavit or a report to court.
- ▶ Language in petitions – We noted variances throughout the state in the format of and language in petitions. There are two issues related to language in petitions: reasonable efforts and ICWA/ASFA
 - Of specific concern was the lack of “reasonable efforts” language in some petitions. Statutes require reasonable efforts be made to prevent removal of a child from the home, or to return a child to the home after removal, or to place a child in a timely manner in accordance with a permanent plan. For the cases we reviewed, documentation of these efforts is not consistently included in petitions.
 - Not all petitions contain language explaining ICWA and ASFA requirements so parents know what is happening and what their rights are in relation to federal law. The 2001 Legislature modified statutes to emphasize requirements for “reasonable efforts” and notification to parents of timeframes. While county attorneys are responsible for filing

Chapter III - General CPS Process

petitions, some CFSD offices draft petitions for the county attorney, so this issue is the responsibility of both entities.

- ▶ Parental statements in court records – We noted inconsistencies in including parental statements in court records. According to section 41-3-402(3), MCA, relating to petitions for TIA, the petition, affidavit, or report to court must contain information regarding statements, if any, made by the parents. In those cases where parental statements were not included in the petition, there was no evidence in the case file indicating whether a statement was made. CFSD policy on affidavits states parental statements are important for providing the court with written documentation on the parent's opinion of the case. Ensuring parental statements are in court records is a dual responsibility for the county attorney and CFSD.
- ▶ Delays in or not appointing GAL/CASA – Section 41-3-303, MCA, states “in every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem (GAL).” A Court Appointed Special Advocate (CASA) may also serve in similar capacity as a GAL. We noted instances where a GAL/CASA was not appointed or was not appointed in a timely fashion. This responsibility rests with the district courts. However, the county attorney and CFSD have responsibility to protect the best interests of the child, so they should at a minimum bring the issue to the court’s attention.
- ▶ Untimely show cause hearings – For some files, we noted the show cause hearing was not held within the statutory timeframe. There are numerous reasons for delays in hearings including full court dockets, continuances, traveling judges, and unknown whereabouts of parents. Hearings are the responsibility of the courts. The 2001 Legislature shortened the statutory timeframe for show cause hearings from 20 days to 10 days, which makes this requirement even more difficult to meet.
- ▶ Changes to CFSD requests – We noted several cases where the county attorney used “plea bargaining” during the process where there are both criminal and civil actions. For example, a request for TLC was reduced to a petition for TIA subject to the parents completing specific tasks. We also noted a case where a concurrent criminal case with a parent was leveraged by changing a TLC to a TIA. Use of these procedures might not be appropriate in relation to the concept of “best interests of the child”, but CFSD has little or no control over this type of decision-making.

Chapter III - General CPS Process

- ▶ Extension of court orders beyond statutory timelines – We noted cases where one or more statutory timelines were not met. There were various reasons for this including indefinite TLC extensions, continuances, and failure to file petitions within timelines. Court orders are the responsibility of the district courts, so meeting statutory timelines is mainly a court responsibility.
- ▶ Signatures on treatment plans – Section 41-3-420(1), MCA, states courts may order treatment plans upon stipulation by the parties or upon a judicial finding a child is a youth in need of care. We noted case files where a treatment plan existed but it was not signed by the judge or the parents. Responsibility for this area rests with both CFSD and the courts.
- ▶ Court order effective dates – We noted variations in documentation and interpretation of the effective dates of court orders. Some court orders contain hearing summaries and dates, which helps define court actions, while other orders do not clearly define when an order is effective. In one case, CFSD personnel indicated the effective date of a court order was the hearing date, but a subsequent court order indicated the effective date to be the date the order was signed. Thus, there is some confusion regarding effective dates. The district courts are responsible for issuing orders and clarifying effective dates.
- ▶ Permanency plan hearing delayed or not held – We noted instances where a permanency plan hearing was either not held or was not held within the statutory timeline. We discovered some judges are not holding permanency plan hearings. In other cases, reasons for delays are similar to those noted for show cause hearings. Again, this is an inconsistency in the CPS process. Court hearings are the responsibility of the district courts.

Conclusion: Main Responsibility for Statutory Compliance is with County Attorneys and District Courts

We found statutory hearing and timeline requirements were generally met for a majority of the files reviewed. However, we did identify inconsistencies in practices and procedures throughout the state, and we also noted some noncompliance. Most of the responsibility for meeting statutory hearing and timeline requirements falls on county attorneys and district courts. It is up to these entities to ensure cases follow mandated requirements. CFSD also has some responsibility for addressing these issues because in numerous cases the division has custody of the children.

Chapter III - General CPS Process

There are various reasons for the issues noted, including lapses in communication, and in some cases judicial district and county attorney caseloads. For example, delays in CPS cases can occur in rural areas because a judge is only in the area on a rotational basis. In urban areas, court dockets are usually full so scheduling hearings within specific timeframes can be difficult. In addition, there are numerous continuances due to timing of appointment of counsel, changes in counsel, additional time needed to review information, etc. There are also impacts to the CPS process related to county attorney offices. County attorneys have other duties and responsibilities aside from CPS cases. These other duties and responsibilities can cause delays in filing petitions and scheduling hearings.

Various officials, including attorneys and judges, indicated inconsistencies in the CPS process exist partially due to the current organization of the judicial system. The State of Montana is currently divided into 22 judicial districts with 40 district judges presiding. These courts are responsible for presiding over all civil and criminal proceedings. CPS cases are scheduled into court dockets with other civil cases, as well as all criminal cases. This has caused numerous scheduling problems for CPS cases and has created delays in the process in some judicial districts because of the generally perceived lower priority of CPS cases. While these delays come in spite of a specific statutory requirement that abuse and neglect petitions must be given the highest preference by the court in setting hearing dates (Section 41-3- 422 (3), MCA), there are numerous other civil and criminal statutes which mandate expeditious judicial action. A December 2001 report prepared by the Legislative Services Division A SUMMARY OF STATE STATUTES THAT REQUIRE DISTRICT COURTS TO ACT EXPEDITIOUSLY OR WITHIN TIME LIMITS identified over 80 other statutes which require district courts to act expeditiously or to conduct specified matters within certain timelines.

Continued Communication and Coordination is Needed

County attorneys and district court judges are respectively overseen by the Attorney General and Montana Supreme Court based on

Chapter III - General CPS Process

statute and constitutional provision. However, county attorneys and district court judges are elected officials who have a substantial amount of autonomy regarding their respective responsibilities. Due to this autonomy, as well as the myriad of competing priorities, we believe there will continue to be inconsistencies in legal procedures and noncompliance with statutes associated with CPS cases. As a consequence, CFSD has limited ability to control the timeliness of CPS proceedings. However, expansion of communication and coordination can improve uniformity in the CPS process.

Some district courts, county attorneys, and CFSD offices have taken steps to address inconsistencies and issues noted during our review. For example, through a cooperative effort by CFSD, Department of Justice, and the Supreme Court, a “deskbook” was created to assist with preparation and prosecution of child abuse and neglect proceedings. This deskbook provides standardized petitions and court orders that, if adopted by all counties and judicial districts, would help reduce inconsistencies and promote compliance with statutory requirements. Administrators within CFSD, the Department of Justice, and the Supreme Court should continue to work together to implement and encourage deskbook enhancements and urge its utilization statewide. To ensure this, these entities will need to continue to emphasize communication and coordination, through training, legal conferences and stakeholder meetings, both statewide and at the local level.

Recommendation #1

We recommend CFSD, the Department of Justice, and the Supreme Court continue to work to improve communication and coordination between the division, county attorneys, and district court judges to increase CPS consistency and statutory compliance.

Role of the Child Protection Unit

The 1999 legislature appropriated funding to the Montana Department of Justice to create a legal assistance program to help county attorneys with child abuse and neglect proceedings. The

Chapter III - General CPS Process

Child Protection Unit (CPU) is part of the department's County Prosecution Bureau. At present the CPU is staffed with two attorneys and one full-time support person for the 28 counties making up the Western, Southwestern, and Northcentral CFSD regions. One attorney and one half-time support staff in Billings assist the 11 counties in the Southcentral CFSD region, and one attorney and one half-time support person based in Miles City assist the 17 counties making up the Eastern CFSD region.

The primary function of CPU is to provide technical and legal assistance to county attorneys in child abuse and neglect proceedings. Depending upon the circumstances and wishes of a county attorney, the level of assistance can range from providing input on how to proceed with an abuse or neglect case, to assuming full responsibility for case administration. The intent of the legislature was to help alleviate county attorney CPS caseloads, especially relative to time-consuming proceedings involving termination of parental rights.

While some funding for CPU activities comes from the Department of Justice, the unit also receives funding from Title IV-E of the Social Security Act. The CPU qualifies for these CFSD-administered funds by virtue of their involvement in child abuse and neglect proceedings where the child has been determined to be IV-E eligible. The CPU also receives funding from other CFSD sources.

Conclusion: The CPU's Purpose and Functions Have Been Changing

Based on interviews and observations, we determined the CPU has evolved from what was initially envisioned. It has changed from exclusive legal assistance and training for county attorneys to also providing training and assistance to CFSD personnel. The primary reason for this change is reluctance on the part of some county attorneys to utilize the CPU. While there is some disagreement about the role and purpose of the unit between CPU staff and county attorneys, it is evident the CPU is not being utilized consistently by county attorneys. Additionally, while the CPU often handles cases outside the cities where they are physically located, they cannot provide comprehensive statewide coverage due to their limited staff

Chapter III - General CPS Process

resources. On the other hand, CFSD personnel in some locations have come to substantially rely on the counsel provided by CPU staff, regardless of who is prosecuting the case.

The initial role of the CPU was to be a resource for overworked county attorneys who had time-consuming child abuse and neglect cases. However, it was, and is the prerogative of each county attorney to decide whether to use CPU resources. At present, while CPU resources are being utilized in some counties, in others they are not.

Did Case File Documentation Support CFSD Actions/Decisions?

Whenever the department intervenes with a family and removes a child from the parental home, a legal basis must exist for removal of the child and for continued placement in foster care. This section discusses our review of case files to determine if they contained consistent documentation to support actions and decisions of CFSD staff. We did not specifically attempt to assess whether evidence gathered on cases met statutory evidentiary standards. This is a judicial decision made on a case-by-case basis.

Case File Documentation is Not Consistent

Our file reviews generally found CFSD staff were gathering information that supported actions taken on CPS cases and district courts supported those actions. However, we noted inconsistencies in how evidence to support department actions was documented. The following are issues noted from our file review.

- ▶ Some affidavits lacked detail – We noted differences in the level of detail provided in social worker affidavits. In some cases affidavits provided significant details regarding alleged abuse or neglect and the evidence used to form the opinion child abuse or neglect occurred. In other cases, the information in affidavits was difficult to follow because they lacked detail on why social workers believed abuse or neglect occurred. We also identified cases where file contents lacked documentation supporting information provided in affidavits. In addition, affidavits did not always include information received when a report of abuse or neglect was made. Examples of missing information include how the department received the report, where the report came from, how/why the person making the report suspected abuse or neglect, and type of allegation reported. We also noted some

Chapter III - General CPS Process

affidavits lacked details on steps social workers took to investigate abuse and neglect allegations.

- ▶ Circumstances described in affidavits and substantiation letters differ – If allegations of child abuse or neglect are substantiated, social workers must send a letter to the accused parent(s) indicating the allegations were substantiated and explain how this conclusion was made. In some case files reviewed, circumstances described in substantiation letters regarding the alleged abuse or neglect differed from information provided in affidavits.
- ▶ CPS meetings are not always documented – There are various meetings that occur during the CPS process between department staff and other officials involved in abuse and neglect cases. These meetings are conducted to discuss case status, services needed and provided, and permanent placement options for a child. Examples include Child Protection Team and Permanency Team meetings. Decisions made at these meetings can have a significant impact on how a CPS case is managed. Based on our review, case files did not consistently document meetings held on CPS cases or the meeting outcomes.
- ▶ Case notes were not always in the file – Case notes are a chronological description of events maintained by social workers to document their activities, observations, and conversations that occur during a CPS case. Examples of information documented in case notes include conversations with the parents or child, observations of a child's home or foster home, or discussions with in-home service providers or medical professionals. Case notes help social workers document events that could potentially impact a case and they can be used as additional evidence on CPS cases. Our file reviews noted a lack of consistency in whether case notes are documented and included in case files.
- ▶ Inconsistent case file maintenance – We noted inconsistencies among CFSD offices in how well CPS case files were maintained. In some CFSD offices, we noted efforts were made to ensure information obtained on cases was placed in the file in a timely and organized fashion. However, in other offices we identified case files that were generally not well-maintained and case documentation did not get filed. We found cases where documentation was missing or not filed correctly so evidence supporting services provided or decisions made on cases was not always in the file. We also noted there is little consistency in how CFSD local offices organize their CPS case files. According to CFSD management, the division is working on a

Chapter III - General CPS Process

common case file organization plan to help improve file administration.

Conclusion: More Specific Case File Policies and Procedures are Needed

State law requires evidence be gathered in child abuse or neglect allegations to support actions taken by the department. CFSD policy also requires social workers to collect sufficient information when investigating cases so they can determine if abuse or neglect occurred. Our file reviews showed there is a general lack of uniformity in clearly documenting CPS case activities.

Department policies outline steps social workers should take to ensure abuse and neglect allegations are thoroughly investigated and that services are provided to children and their families. However, we found policy often leaves case management and documentation decisions up to individual social workers and their supervisors and this has caused inconsistencies in case file documentation. For example, department policy does not require the use of a “risk assessment tool” but indicates it may be used. Case files did not always document how social workers determined the level of risk to a child because policy allows social workers to decide on a case-by-case basis whether to use the risk assessment tool. Another reason case files are not documented consistently is procedures do not exist stating how case files should be documented and the types of documentation that are acceptable. This decision is also left to individual social workers and supervisors. Interviews also indicated turnover in personnel and limited administrative support resources have contributed to problems with case file organization and management.

To improve consistency in case file documentation, the CFSD needs more specific policies and procedures specifying how case files should be documented.

Chapter III - General CPS Process

Recommendation #2

We recommend CFSD establish specific policies and procedures on acceptable types of case file documentation to improve consistency of information to better support social worker actions and decisions.

What Services Were Provided to the Family?

This section relates to services provided to families involved in child abuse and neglect cases. There are many types of services including family group decision-making, in-home services, transportation, supervised visitation, medical/mental evaluations and counseling, and day care. Statute requires the department to make “reasonable efforts” to prevent removal of a child from their home or to reunify families when removal of a child is necessary. Reasonable efforts include, among other things, developing written case plans and providing services. CFSD policy also provides guidance on reasonable efforts. In most cases, CFSD develops a treatment plan for the family that includes requirements of the parent(s) for reunification to occur such as completion of anger management or parental training classes.

Inconsistencies and Weaknesses Noted

While services were provided to families, we noted inconsistencies and weaknesses with procedures in various locations statewide. We also noted actions taken by some CFSD personnel where the authority for the action was unclear. The following identifies the noted issues.

- ▶ **Inconsistent use of Family Group Decision-Making (FGDM)** – According to CFSD policy, FGDM is an effective way to maintain children in families. Stakeholders in the CPS process agree FGDM is a useful tool. During our review, we noted inconsistent use of FGDM throughout the state. Some CFSD offices use these meetings frequently for all cases, while other offices either use the meetings infrequently, have not used them at all, or only use them in certain cases. CFSD management recently increased emphasis on social worker use of FGDM.
- ▶ **Unclear statutory authority for treatment plans for non-custodial parents or kin** – We noted some cases where CFSD staff required non-custodial parents or kin to complete treatment plans when

Chapter III - General CPS Process

they were willing to assume custody of a child. Section 41-3-420(1), MCA, gives the court authority to order a treatment plan upon stipulation of the parties or upon a judicial finding that a child is a youth in need of care. Throughout our review, CFSD personnel indicated a child's safety is the paramount concern in CPS cases. This philosophy appears to be the reason behind requiring these treatment plans for non-custodial parents not involved in the case. However, CFSD policy prohibits requiring treatment plans for non-custodial parents unless specific criteria are met.

- ▶ Inconsistent and vague treatment plans – Treatment plans are one of the main elements of CPS cases. We reviewed treatment plans during the audit and noted inconsistencies in language and format. For example, some plans did not contain dates indicating when each component of the plan needed to be addressed. In addition, some treatment plans contained vague language. For example, some plans required chemical dependency evaluations but did not provide specifics about who could conduct the evaluations or when the evaluations were to be completed. Reunification is usually based on successful completion of the treatment plan. Inconsistent and unclear plans hinder a families' ability to successfully complete requirements, thus impacting reunification.

Conclusion: CFSD Makes Efforts to Reunify Families but Inconsistencies Should be Addressed

Services were provided to families in all cases reviewed. CFSD personnel appear to make efforts to reunite families. However, it is the court's responsibility to determine the reasonableness of CFSD efforts to provide reunification services. Reasonableness is not defined by Montana statute.

While the division is making efforts to reunite families by providing services, we believe the process would benefit from increased uniformity and consistency. According to section 41-3-101(2), MCA, it is the policy of this state to protect family unity whenever possible. The variations in services and treatment plans noted during our review indicate a need for increased management attention. The required areas of focus appear to be family group decision-making and treatment plans. Since FGDM is portrayed as an effective method for maintaining the family unit, the division should ensure consistent application statewide. We noted treatment plans utilized in some local offices provide clarification of requirements for reunification. The division should consider standardizing a detailed

Chapter III - General CPS Process

treatment plan outline to increase parental clarification of the expectations to be fulfilled prior to family reunification.

Recommendation #3

In order to improve services provided to families, we recommend CFSD:

- A. Use family group decision-making on a more consistent basis.**
- B. Establish a standardized, detailed treatment plan outline.**

With Whom Was the Child Placed in Foster Care?

Section 41-3-101(4), MCA, directs CFSD to place children with extended family prior to placement in an alternative facility, if it is in the best interests of the child and when the division approves the home. Extended family, according to this section of statute, includes adult siblings, grandparents, great-grandparents, aunts, and uncles. The division refers to extended family placements as kinship placements, and adds godparents, stepparents, and others with significant emotional ties to the child. The social worker and supervisor are responsible for foster care placement decisions.

We reviewed case files for documentation related to placement of children in foster care. Our review concentrated on justification supporting placement decisions, which includes compliance with placement preferences.

We also examined case file documentation of social worker contact with children placed in foster care. CFSD policy contains the following paragraph:

“The social workers must maintain frequent contact with the child and foster care provider as agreed upon by the social worker, supervisor, and foster care provider. The worker supervising the child’s placement should have regular face-to-face visits with the foster care provider and the child. At a minimum, these visits should occur quarterly, unless an exception is granted by the supervisor.”

Chapter III - General CPS Process

The following section discusses our review of foster care placements and social worker contacts with children placed in foster care.

Placements Meet Policy Expectations But Documentation Does Not Support Decisions

The majority of foster care placements in the CPS case files we reviewed appeared to meet policy expectations. Children were often placed with non-custodial parents, in kinship placements, or in regular or specialized foster care homes. However, a majority of files did not contain documentation clearly supporting each placement decision. In addition, case file documentation did not clearly identify social worker contacts with children in foster care. The following describes the issues identified.

- ▶ Lack of documentation of placement reasons/changes – While case files usually contain information on where children are placed, they do not always contain detailed reasons to support placement decisions. For example, the case file might indicate a child was placed with the Smith's, but it does not contain documentation that indicates who the Smith's are and why they were selected as the most appropriate placement for the child. As a result, case files do not consistently provide justification to signify compliance with statutory placement preferences.
- ▶ Lack of documentation of contact with children in foster care – Contact occurs between social workers and children in foster care, but there is no consistency in documentation indicating when visits are completed. Due to this lack of documentation, we were unable to conclude on compliance with CFSD policy related to supervision of foster care placements. A similar issue was identified as a concern in a previous performance audit of Foster Care Facility Licensing (93SP-03). A recommendation was made in this previous report to clarify requirements for social worker contacts.
- ▶ Placement of children with non-custodial parents – CFSD personnel conduct home studies of potential foster care providers, including extended family, to help ensure the home is a safe placement for children. In one case we reviewed, CFSD completed a home study of the child's non-custodial parent prior to placing the child. We also noted several other cases where children were not automatically placed with the non-custodial parent. However, statute and CFSD policy require placement of children with non-custodial parents unless specific criteria are met. These case files did not contain documentation supporting CFSD decisions to not place children with non-custodial parents.

Chapter III - General CPS Process

- ▶ Lack of notification of placements – During file review, we noted instances where the non-custodial parent was not notified of their child's removal from the home of the custodial parent and of placement into foster care. In our opinion, this does not comply with statute and policy related to notification of foster care placements. Section 41-3-202(5a)(ii) and 41-3-301(1), MCA, requires CFSD to notify the parents at the time of placement or as soon after placement as possible. CFSD policy for emergency removals requires the social worker to notify the parent at the time placement is made and document the notification in the case file. Policy further requires notification to parents of changes in foster care placements. This notice of placement changes requires notification within three days if parental rights have not been terminated, and if a parent's whereabouts are unknown, a reasonable effort to notify must be made. Notifications of placement changes were also not specifically documented in case files. CFSD officials believe statutory revisions by the 2001 Legislature have clarified the process for notification of non-custodial parents when a child is removed from the custody of the custodial parent.

Conclusion: Documentation and Communication of Placement Decision Needs Improvement

While our file review indicated the majority of foster care placements appeared to meet policy expectations, improvements are needed in regard to documentation and communication. Decisions on where to place children are the responsibility of the social worker and supervisor. In practice, it appears social workers generally place children in whatever foster homes are readily available while attempting to identify potential family placements. This decision-making process may include input from the supervisor or family resource specialist, but often times it does not. Our review indicates placement decisions are seldom documented in case files. Social workers are concerned with the safety of children, and documentation of reasons for placement decisions are not a top priority.

CFSD policy provides some direction to social workers regarding foster care placements, but this guidance does not clearly address documentation and communication. Based on policy, CFSD appears to consider documentation important. However, in practice, documentation is neglected. CFSD has not taken steps to ensure case file documentation supports all foster care placement decisions.

Chapter III - General CPS Process

In addition, CFSD policy does not provide specific details on documentation requirements.

Social workers and supervisors must comply with state and federal requirements regarding foster care placement preferences, as well as with CFSD policy. Procedures are needed to ensure the reason(s) for each foster care placement, including placement changes, are clearly documented in the case file. This type of documentation will help support actions taken and provide justification when established placement preferences cannot be followed.

Recommendation #4

We recommend CFSD ensure all foster care placement actions are supported and clearly documented in CPS case files.

What Evidence of Supervisory Review Exists?

According to the CFSD policy manual, social workers or clerical staff are responsible for preparing and maintaining CPS case files. Policy also requires social worker supervisors to review each case and evaluate the services provided to children and their families. Case file reviews should examine all file information to ensure documentation was completed appropriately, completed in a timely manner, and social workers followed proper steps in handling the case. Supervisory review is an important part of the CPS process because it is the first level of checks and balances within the CPS system over social worker activities. Although there is external review of social worker activities by entities such as Citizen Review Boards, Court-Appointed Special Advocates, and Child Protection Teams, we believe more comprehensive internal monitoring of case files is warranted. This section of the report discusses supervisory review of case files which contain documentation of social worker activities.

Supervisors Perform Limited Review of CPS Case Files

The CFSD has experienced a high level of staff turnover. As a result, 40 percent of social workers have worked for CFSD for three years or less. Therefore, supervisory review of case files is important to ensure compliance with statutory requirements and

Chapter III - General CPS Process

CFSD policies. Our review found most supervision of cases is limited to discussions between the social workers and supervisors. There is a limited amount of formal review of CPS case files by social worker supervisors. Some social workers indicated their case files had never been formally reviewed by a supervisor. Consequently, while supervisors had a general understanding of the background and actions taken on CPS cases, they were not always familiar with specific case details or case activities. For example, in one case the supervisor did not know a social worker was managing a case inappropriately until the parents brought it to the supervisor's attention. The supervisor acknowledged if they had reviewed this case file, the situation could have been avoided or addressed in a timelier manner. In instances where supervisors said case files were reviewed, we noted inconsistencies throughout the state in whether the reviews were documented.

Specific details related to supervisory review of CPS case files are discussed below.

- ▶ Supervisory review is not consistently documented in case files – Some case file reviews were evident by supervisors signing off on certain documents, such as case plans and court affidavits. However, other files we reviewed contained no documented evidence case files had been reviewed by the supervisor. Some supervisors said because case reviews are often done informally (i.e. discussed with social worker), the discussions were seldom documented in the file. For supervisors who were documenting their reviews, we noted a variety of procedures being followed. For example, some supervisors documented their reviews in the paper (hard copy) file, others documented their file review on CAPS, and some supervisors documented their reviews in both areas.
- ▶ Remote offices create challenges to supervisory consistency – There are numerous CFSD offices where supervisors are located in offices other than where social workers are located. For example, a supervisor in Libby supervises social workers located in Thompson Falls (a distance of approximately 90 miles). Not being located in the same town as social workers can make it difficult for supervisors to consistently review CPS cases. We noted differences in procedures around the state in how remote supervision is handled. For example, some supervisors discuss

Chapter III - General CPS Process

cases with social workers over the telephone, others communicate using e-mail, and many use a combination of the two. In some areas of the state social workers periodically travel to the supervisor's office and in other areas supervisors travel to where the social worker is located.

- ▶ Master checklist not consistently used – CFSD has taken steps to improve the level of documentation of CPS case files by developing a “master checklist” that must be used and placed in every CPS case file. The master checklist is designed to aid workers and supervisors in tracking the many tasks that must be completed once a child enters a foster care placement. The checklist is divided into 3-month time periods with each required task listed under the appropriate time period for completion. The master checklist also requires the social worker responsible for the case to sign-off on each task when it is completed. We noted the master checklist was not always used on cases. We also identified several cases where CFSD staff did not fully complete the checklist when it was used. In the files we reviewed, there were no supervisors who signed-off on the checklist.
- ▶ Supervisors carrying CPS caseloads – In addition to their regular supervisory duties, we noted many social worker supervisors carry CPS caseloads. The supervisors can be responsible for conducting all activities on these cases, including investigations, obtaining services, and preparing for and attending court hearings. Based on interviews, the main reason supervisors carry caseloads is due to social worker turnover or leave of absence situations. For example, a supervisor in one CFSD office was handling all the cases for several social workers that were out on maternity leave. One of the major impacts to the CPS process from supervisors carrying caseloads is limited time to review case files and supervise social workers.

Conclusion: Several Steps Need to be Taken to Improve Supervisory Review

A main cause for the documentation inconsistencies we identified in the CPS process is lack of supervisory review. Based on our reviews and interviews with social worker supervisors, we found there are four reasons a limited amount of supervisory review is occurring. These include: unclear policies related to review requirements, no standardized process for reviewing and documenting files, supervisors carrying CPS case loads, and no ongoing performance appraisal system of supervisors and social workers.

Chapter III - General CPS Process

Policy Related to Supervisory Review Needs to be Clarified

Social worker supervisors do not believe current CFSD policy is clear on what constitutes sufficient supervisory review or how their reviews should be documented. Some supervisors believe policy only requires case file reviews be documented in CAPS while others believe reviews should be documented in both the hard copy file and the electronic file. Based on our review of current CFSD policy, changes should be made to policy to clarify supervisory review expectations. For example, policy does not indicate how supervisors should document their reviews in case files, so inconsistencies exist in how or if reviews are documented. We also noted current policy does not require case files to be formally reviewed by supervisors on an ongoing basis. It only requires files be reviewed when cases are transferred between social workers or when cases are closed. Policy requiring more frequent case file reviews could help reduce several of the identified inconsistencies.

Master Checklist Modification Would Help Standardize Review

There also needs to be a process established to provide supervisors an efficient way to review case files and a standardized method to document reviews. It would be beneficial for supervisors to use the master checklist to aid in reviewing case files and help them verify each step is completed and documented in the file. The CFSD could modify the master checklist so social worker supervisors can sign-off on each task to verify completion and documentation in the file. This would also help supervisors consistently document their case file reviews. The division should also clarify policy related to the master checklist to reflect this change.

Supervisor Caseloads Should Be Reallocated

Supervisors indicated another reason they are unable to consistently review cases is because many of them also have their own CPS caseloads. Managing caseloads does not allow time to review CPS case files of social workers. Some supervisors indicated their current caseloads are large so it is difficult to effectively manage all the cases. Supervisory review is an important part of the CPS process to ensure cases are handled appropriately and actions are documented. To increase the amount of supervisory review of CPS case files, caseloads of supervisors need to be reallocated to non-supervisory staff, where possible. The CFSD needs to review the number and

Chapter III - General CPS Process

type of cases for each social worker supervisor and determine the level of reduction needed to ensure supervisors can focus their efforts on reviewing CPS case files of social workers.

Ongoing Performance Appraisals Needed

An ongoing performance appraisal process is an important management control to ensure employees meet all job requirements and expectations. State policy and administrative rule (2.21.6403, ARM) requires performance appraisals be completed on a “regular recurring” basis. They help improve employee performance by identifying strengths and weaknesses and steps needed to improve an employee’s skills. Performance appraisals are key in decentralized organizations to promote communication between department management, supervisors, and staff to ensure consistency in operations. In CFSD operations, regional administrators are responsible for completing performance evaluations of social worker supervisors. Social worker supervisors are responsible for evaluating the performance of social workers. During our audit, we noted performance appraisals of social workers and social worker supervisors have generally not been completed on any type of recurring, comprehensive basis. Consequently, many of the issues we discovered during the audit have not been formally identified or addressed by regional administrators or social worker supervisors. There could be fewer inconsistencies within the CPS process if ongoing performance appraisals are completed on social worker supervisors and social workers.

Chapter III - General CPS Process

Recommendation #5

To improve supervisory review over CPS activities we recommend CFSD:

- A. Clarify policy on the type and frequency of supervisory review of case files.**
- B. Expand existing policy to require supervisors to sign-off on elements listed on the master checklist.**
- C. Review the caseloads of all social worker supervisors and reallocate caseloads where possible.**
- D. Ensure performance appraisals are completed on social workers and social worker supervisors on a regular basis.**

An Ongoing Independent Review Could Help Improve Uniformity

There are numerous laws, rules, and division policies staff must adhere to in providing protective services to children. Since there are so many specific requirements it can be difficult for management and staff to readily determine compliance with laws, rules and policies or identify areas where process efficiency should be improved. In addition to more frequent supervisory review of case files, the CFSD would benefit by implementing a quality control system to review the CPS process. Therefore, we believe an ongoing independent review of CPS case files is warranted. A previous performance audit of child protective services (#89P-29) made a recommendation for periodic review of CPS case files. According to the 1992 follow-up, this prior audit recommendation was implemented; however, the quality control process was eliminated, possibly during reorganization of the Department of Family Services into the Department of Public Health and Human Services. CFSD management should reconsider establishing an independent review to help ensure cases are being properly managed.

An independent review of case files could be conducted internally by a team of CFSD personnel, such as the substantiation review panel. The review panel could expand its duties from only reviewing cases where fair hearings were requested to periodically reviewing a sample of case files from around the state. Another option is to have

Chapter III - General CPS Process

an external entity complete the reviews, such as the department's internal audit function or personnel from the Quality Assurance Division. Reviews performed by any of these functions would provide department management with information on how consistently statutes, rules, and CFSD policies are followed and the level of uniformity in the process. Independent reviews could also answer ongoing questions regarding the CPS process, similar to those developed by the legislature in HJR 32. For example, the reviews could provide an analysis of program and system performance in areas such as family preservation and reunification, foster care placements, and case supervision. The reviews would provide an opportunity to effectively identify problems and allow the department to address any problems in a timely manner.

Another possible enhancement to a quality control system would be to continue conducting stakeholders meetings on an ongoing basis. A stakeholders meeting conducted in February 2002 was required as part of the federal government's review of the CPS system. This meeting appeared to provide a reasonable approach to obtaining input on strengths, weaknesses, and potential solutions to problems from key entities involved in the CPS process. In other words, it provides another means for quality control.

Recommendation #6

We recommend CFSD implement a quality control system by periodically reviewing CPS case files and continuing to conduct stakeholder meetings.

Chapter IV - Additional CPS Issues

Introduction

This chapter provides information on issues related to the CPS process that were not necessarily identified during file reviews but were noted during interviews with numerous stakeholders in the CPS process and reviews of other information. Examples of stakeholders interviewed include department staff, county attorneys, service providers, guardians ad litem/court-appointed special advocates, and tribal officials. Other information reviewed included previous audit reports, other states' information, and materials associated with CPS meetings and conferences.

Substantiation Fair Hearing Process

A substantiation of child abuse or neglect can impact an individual's ability to obtain employment or licenses in areas such as childcare, foster care, and group homes. If the department substantiates abuse or neglect allegations, CFSD policy requires the social worker to notify individuals in writing and explain how the department came to this conclusion. The letter also informs an individual of their right to a fair hearing.

A fair hearing is an important part of the CPS process because it provides accused individuals an opportunity to challenge the department's substantiation of child abuse or neglect. It also provides CFSD staff the opportunity to provide evidence on why substantiations should be upheld. Therefore, it is important fair hearing procedures be clear to ensure hearings are handled in a consistent and timely manner. However, our audit identified several issues regarding inconsistencies and timeliness in the fair hearing process. For example:

- ▶ Among DPHHS personnel there are misunderstandings regarding when a person may appeal a substantiation to a fair hearing. CFSD's policy manual states a fair hearing is not required if a district court adjudicates a child as a youth in need of care. However, department legal staff assert an individual against whom allegations of abuse or neglect have been substantiated should be afforded an opportunity to appeal the substantiation at a fair hearing. The reason is the court hearing and the fair hearing might address different issues or instances of alleged abuse or neglect. Additionally, district courts focus on whether the child is at risk, and the fair hearing focuses on

Chapter IV - Additional CPS Issues

whether evidence exists proving an individual was the perpetrator in the abuse or neglect case.

- ▶ Department staff have an inconsistent understanding of how the fair hearing process works. For example, some social workers believe they are not allowed to have department legal staff help them on any of their cases and others believe they can only have legal representation if the parent or parents have an attorney. The department should clarify when legal representation can be requested.
- ▶ The fair hearings officer and the substantiation review panel have different objectives when reviewing cases. The substantiation review panel generally examines cases to determine if evidence proves the abuse or neglect that was substantiated meets criteria in statute and CFSD policy. The fair hearings officer determines if evidence shows the person named in the substantiation letter abused or neglected a child.
- ▶ The fair hearing process is lengthy. DPHHS legal staff indicated the process generally takes a minimum of five months from the time a hearing is requested until a decision is rendered. This corresponds to the time frame we noted in our file review for cases that went to fair hearing. As a result, child abuse and neglect proceedings at the district court level have likely continued which can cause confusion about the overall status of a case both for the parent(s) and social workers should a substantiation not be upheld by the hearings officer.

Conclusion: Administrative Rules Are Needed and CFSD Policy Needs Clarification

Administrative rules (ARMs) provide guidelines to ensure departmental processes are handled consistently. One reason for lack of consistency with the fair hearing process is that specific ARMs have not been established. Since rules do not exist for child abuse and neglect substantiation hearings, the hearings officer indicated other hearings with ARM-defined timelines, take priority over CPS cases. This has created some of the time delays in completing fair hearings for child abuse and neglect cases. Lack of defined rules is also part of the reason for confusion among social workers regarding the fair hearing process. ARMs would help clarify issues such as evidentiary standards, use of witnesses, etc. Additionally, the hearings officer believes fair hearings are needed to provide claimants due process in child abuse and neglect cases, but questioned the department's current authority to conduct these

Chapter IV - Additional CPS Issues

hearings since rules do not exist. DPHHS legal staff agree ARMs are needed to clarify how the fair hearing process for CPS cases should proceed.

We also noted CFSD policies and procedures need to be modified to more accurately reflect the existing fair hearing process. The policies and procedures for child abuse and neglect fair hearings were initially written for licensing actions, such as foster care, not for child abuse and neglect substantiation appeals. Policies and procedures regarding fair hearings for licensing cases and child abuse and neglect cases were intermingled with each other and it is difficult to determine what is required of CFSD staff for abuse and neglect cases. For example, current policies and procedures do not clearly address the role and responsibilities of the substantiation review panel or what criteria the panel should be considering when it reviews cases. Additionally, clear policy and procedure could reduce confusion on the part of social workers concerning: issuance of substantiation letters, need for social workers to be represented by legal staff, and overall purpose of the hearings in relation to child abuse and neglect proceedings.

Recommendation #7

To ensure a more consistent fair hearing process for CPS substantiation appeals, we recommend:

- A. DPHHS develop ARMs for substantiation fair hearings.**
- B. CFSD develop policies and procedures specifically related to substantiation fair hearings.**

Legal Representation for Indigent Parents

Parents involved in child abuse and neglect proceedings may be represented by legal counsel. However, according to statute, legal representation for indigent parties is at the discretion of the court for all proceedings except Termination of Parental Rights. During the course of our review, we noted some district court judges automatically appoint legal counsel for indigent parents at the beginning of child abuse and neglect proceedings regardless of

Chapter IV - Additional CPS Issues

whether the case may proceed to Termination of Parental Rights (TPR). This is similar to what is required for every Indian Child Welfare Act case. However, many judges do not typically offer legal counsel to indigent parties unless a TPR petition has been filed. As a result, there are some indigent parents who receive legal representation from beginning to end of child abuse and neglect proceedings and some parents who only receive legal representation if/when a petition for TPR is filed.

How is a Determination Made on Whether Legal Representation Will be Provided?

While we did not specifically review how counties and district court judges determine their policies on legal representation of indigent parents, the decision of whether to do so appears to be based on both financial and philosophical considerations. In counties where public defender offices exist, the judges typically appoint legal counsel for indigent parents at the beginning of child abuse and neglect proceedings. In other counties where public defender offices do not exist, judges must appoint an attorney to represent an indigent party. Consequently, legal representation for an indigent party is often limited to TPR proceedings because of the associated costs of retaining legal counsel. When district court judges do provide legal representation for indigent parents at the beginning of child abuse and neglect proceedings, it appears to be a result of a philosophy that all parents should have legal representation in these proceedings from the start of such actions.

Montana Supreme Court Decisions Associated With Legal Representation

In various Montana Supreme Court decisions, the court has held due process of law does not require parents to have counsel during the initial stages of child abuse and neglect proceedings, only requiring parents have counsel prior to the permanent custody hearings. This position is partially derived from a similar United States Supreme Court position. However, the Montana Supreme Court has not held appointment of counsel is always inappropriate or otherwise precluded during earlier stages of child abuse and neglect proceedings. A recent Montana Supreme Court decision states, "this Court has not formulated any guidelines precluding or making inappropriate the appointment of counsel in child protective proceedings which precede termination proceedings, if due process

Chapter IV - Additional CPS Issues

so requires. Rather, whether due process requires counsel to be appointed at earlier stages in the proceedings must be determined in view of all circumstances.”

Conclusion: Variation in the CPS Process Exists When Legal Representation is Not Appointed to Indigent Parents at the Outset of a Case

Our file reviews as well as interviews with various CPS system participants indicate there is statewide variation in whether indigent parents receive legal representation in child abuse and neglect proceedings prior to Termination of Parental Rights. Current statute does not require legal representation for indigent parents from the outset of child abuse and neglect proceedings. The determination of when legal representation is offered/provided depends on philosophy and availability of resources. A recommendation is not offered because we did not specifically examine the outcomes of cases where legal representation varied, but rather focused on uniformity of CPS services.

Maintaining Uninvestigated Abuse and Neglect Reports

The Centralized Intake Bureau receives reports of suspected abuse or neglect. However, when further reviewed there are some reports that do not meet established criteria demonstrating potential risk to a child and thus warranting further investigation. These reports are categorized as child protective services information (CPI) and entered in the CAPS system. According to department personnel, CPI reports indefinitely remain in CAPS, but are not investigated.

During our review, we noted numerous cases where CPI reports were used as evidence to justify expanded CFSD actions. Upon further analysis, we questioned whether the CFSD has authority to maintain a database of CPI reports. The only apparent difference between CPI and “unfounded” reports is whether the determination is based on an investigation. A report categorized as CPI does not indicate a child has been or may be in danger of being abused or neglected. Consequently, such reports do not warrant further investigation. Social workers in the field designate allegations as “unfounded” if an investigation determines abuse or neglect did not occur. The department maintains all CPI reports in the CAPS system indefinitely. In addition, a person against whom allegations were made is not notified of the allegations or that their name will be

Chapter IV - Additional CPS Issues

maintained in the department's database. Since CFSD does not notify parties of such allegations, individuals are not afforded the opportunity to challenge the allegation and placement of their name in the CAPS database.

Section 41-3-202 (5)(b), MCA, requires the department to destroy all records related to abuse or neglect allegations that an investigation determined were unfounded. This law was enacted to help protect individual privacy rights. Maintaining indefinite records of CPI reports could be interpreted as circumventing the law requiring destruction of unfounded abuse and neglect reports. However, statute is not clear on whether the CFSD has authority to maintain records of individuals where the division has decided a child is not in danger. This is an issue that needs legislative clarification.

Recommendation #8

We recommend the department seek legislation to clarify its authority to maintain child protective services information on individuals where the department has determined children are not in danger and investigations are not needed.

Analysis of CFSD Activities and Organizational Focus

We examined CFSD's mission statement in relation to division activities and stakeholder perceptions of what child protective services should consist of. Throughout the course of our audit, CFSD management and staff expressed concerns about limited staff and programmatic resources. While we did not complete a comprehensive analysis of individual social worker caseloads, we reviewed prior CFSD efforts to increase staff resources, staff turnover, and social worker caseload listings. The following sections provide a discussion of factors related to those areas.

CFSD Mission

The CFSD mission is to keep children safe and families strong. Many of the reports of child abuse and neglect do not involve removal of children from the home. Rather, social workers attempt to keep the child or children safe by strengthening family unit capabilities through intervention services. Throughout the evolution

Chapter IV - Additional CPS Issues

of child protective services there has been a growing emphasis on services designed to prevent foster care placements and increase parental skills to raise children in a safe and healthful environment. Federal and state statute provides the basis for CFSD to provide both intervention and protective services.

While the provision of these services jointly enhance child safety and families, the result of this is existing staff and programmatic resources may not be properly focused. The question facing CFSD management and other stakeholders is, "what should the appropriate level of response be toward intervention and protective services, and should CFSD's mission more specifically describe this focus?" A substantive portion of intervention-type services are contracted out to private providers. However, throughout the CPS regions there are consistency issues with regard to the balance of the provision of these services because of variability in private provider availability, associated staff resources, and funds to contract for such services. The current mission statement and legislative intent regarding CFSD's direction may need further clarification.

Contracted Time Study

CFSD contracted with a private entity for a time study analysis in January and February of 1999. The main purpose of the time study was to determine if CFSD had sufficient staff to carry out its mandates. A secondary purpose was to examine current staff allocations across the regions to determine equity. The study results indicated CFSD did not have sufficient staff to carry out its mandates, and also noted potential inequities in staff allocations. These conclusions referred only to social workers and did not include case aides or supervisors. The department's budget proposal to the 2001 Legislature included a request for an additional 44.75 FTE. The legislature approved funding for an increase of 6 FTE to staff the centralized intake function, increase in-home services, and to initiate additional family group conferences.

Staff Turnover

Based on department staffing information we noted turnover in social workers is common. The median years of service for CFSD social workers is 4.3 years, and 40 percent of CFSD social workers

Chapter IV - Additional CPS Issues

have worked for the division for three years or less. Turnover negatively impacts CPS case management. When a social worker leaves, his or her cases must be transferred to another worker. Staff vacancies increase caseloads and effectively reduces available time for individual cases. Vacancy savings, recruiting difficulties, and other factors can delay division hiring of new staff, which also has an impact on workloads.

Caseload Listings

As noted, intervention services address problem areas within families before they become larger problems that could lead to a child being removed from the home. For example, families could receive, on a voluntary basis in-home services, alcohol or drug evaluations, or nutrition counseling while the family remains together. Protective services, which are often not voluntary, become necessary when family problems escalate to the extent children must be removed from the home and placed in substitute care to ensure their protection.

While the format of caseload listings we obtained varied, they provided a general idea about cases managed by social workers. Based on our review of these caseload lists, caseload varies from worker to worker and it is difficult to quantify actual workload because of the individual characteristics of each case. However, the caseload listings we received do not accurately describe social worker CPS caseloads because they include cases where CFSD intervened in the family as well as cases where CFSD is providing intervention services to the family and no removals have occurred. In addition, caseload lists typically identify the parents and children as individual cases. For example, a single parent family with four children could be designated as five separate cases on the caseload listing. However, there may not be individual requirements for each family member.

What Should CFSD Do?

The contracted time study indicated for its findings to be useful the CFSD would need a process to measure workload on an ongoing basis. In response to the ongoing federal review of Montana's CPS activities, CAPS is being enhanced to provide additional information

Chapter IV - Additional CPS Issues

about social worker's caseloads. However, we noted assessing staff workload has been an ongoing issue for the division. A performance audit completed by the Legislative Audit Division in 1990 (89P-29) recommended development and implementation of a management information system including workload/caseload information and statistics. At that time the department agreed with the recommendation and planned to develop a management information system. This prior recommendation is still applicable to CFSD. The division still does not have comprehensive management information about social worker's caseloads/workload.

Although we did not specifically analyze staff resources, the outcome of the contracted time study, the effects of turnover, and provision of both intervention and protective services are factors potentially affecting consistency of CPS practices. Based on federal directives and input from CFSD and other stakeholders in the CPS system, intervention services are an important part of the process. However, in practice, intervention services may take social worker time away from protective services like working to reunify families who are already separated. CFSD management questions how to appropriately balance being both a "welfare" (i.e. intervention services) program and a protective program within the context of federal and state statutes, as well as within available resources. According to management and other stakeholders, the division does not have the resources to comprehensively and effectively be both an intervention and protective services program. Based on this information DPHHS management may need to consider adjusting CFSD operations. There are various possibilities including:

- ▶ Prioritize workload – priorities could be established for protective and intervention services for social workers. Protective services would receive a higher priority (based on legislative policy) and thus more time would be spent on these activities. This would allow social workers to focus more on protective services and address some of the issues noted throughout this report.
- ▶ Shift responsibility – responsibility for intervention services could be shifted from social workers to other designated staff or

Chapter IV - Additional CPS Issues

possibly another or new entity within the department. Currently, CFSD has in-house and contracted family based service specialists who provide in-home services, but the resources provided to these services are limited. As an alternative, a separate entity could be created within the department to assume responsibility for intervention services.

Conclusion: DPHHS and the Legislature Need to Evaluate CFSD's Primary Mission

One of the reasons for inconsistency in CPS practices can be attributed to the competing priorities of intervention and protection requirements. When this competition is coupled with complex caseloads, potentially marginal staffing levels, staff turnover, etc., established policies and procedures regarding documentation and consistent supervision get less attention and emphasis because child protection is viewed as more important. Development of a workload/caseload tracking and analysis system would help determine and justify resource needs for the department and legislature.

Recommendation #9

We recommend CFSD:

- A. Establish a workload/caseload tracking system to further analyze social worker activities and to help establish division priorities with existing resources.**

- B. Seek legislative clarification regarding the CFSD's future mission if it formally determines child abuse intervention services is adversely affecting child protective services.**

Chapter V - Indian Child Welfare Act

Introduction

House Joint Resolution 32 (HJR) requested an examination of the application of the Indian Child Welfare Act (ICWA). HJR 32 specifically requested the audit examine:

- ▶ Policies and procedures regarding the application of the Indian Child Welfare Act of 1978, especially in the urban jurisdictions, many of which are near Indian reservations and all of which may involve Indian children.
- ▶ The extent to which the department's policies and procedures, such as family group conferencing and foster care home recruiting, reflect cultural needs and are conducted in a manner that considers cultural practices and language.

In practice, case management of ICWA and non-ICWA cases are similar, and findings and recommendations presented in Chapter III also apply to ICWA cases. Issues presented in this chapter only address activities specific to application of the Indian Child Welfare Act. We start the chapter with an overview of federal and state requirements for conducting child abuse and neglect proceedings involving Indian children.

Why Was ICWA Established?

Congress passed the Indian Child Welfare Act of 1978 to address concerns related to the break-up of Native American families. Historically, Indian children who entered the foster care system were more likely to be placed in non-Indian foster or adoptive homes. This act established national policy declaring the best interest of Indian children is to promote the stability and security of Indian tribes and families. To achieve this objective, ICWA grants Indian tribes exclusive jurisdiction in any child abuse and neglect proceeding involving Indian children residing on reservations, including children temporarily living off a reservation.

ICWA also protects tribal interests and extends protections to tribal members involved in child abuse and neglect proceedings in state courts. Provisions in ICWA include:

- ▶ A tribe's right to intervene in abuse and neglect proceedings involving a child the tribe recognizes as a tribal member. By

Chapter V - Indian Child Welfare Act

intervening, a tribe becomes a party to the proceedings, but jurisdiction remains with the state.

- ▶ A tribe's right to petition a state court for the tribe to assume jurisdiction of a case. If the state court grants the petition, the case is transferred to the tribal court and the state no longer is involved. A state court must grant transfer of jurisdiction unless there is "good cause to the contrary" to not transfer the case. However, a state may not transfer a case if either parent of an Indian child objects to the transfer to tribal jurisdiction.
- ▶ A tribe's sole authority to determine whether a child is a tribal member. Some tribes base membership decisions on enrollment status, or eligibility for enrollment. However, enrollment is not the only means for determining whether a child is a tribal member. A tribe's determination of a child's membership status is conclusive evidence. If a social worker believes a child may be affiliated with a tribe but is unable to obtain a conclusive determination from a tribe or parents, policy mandates the social worker contact the Bureau of Indian Affairs (BIA), Department of the Interior, for a decision. However, a tribe can intervene at any point in a proceeding, which overrides a BIA determination of a child's status with a tribe. No state entity or agency can make a membership determination.
- ▶ The right to be informed of state child abuse and neglect proceedings. States must notify a tribe of state court proceedings when the state knows or has reason to believe the proceedings involve an Indian child.

Additionally, ICWA mandates how child protection agencies will manage cases involving Indian children. Requirements address foster or adoptive placement preferences for Indian children, evidentiary standards, and levels of effort to provide remedial and rehabilitative services to Indian families.

To promote compliance with ICWA, the BIA developed guidelines for state court proceedings involving Indian children. The guidelines include detailed explanations and interpretations of expected or required activities for cases involving Indian children.

Noncompliance with ICWA can adversely affect a case. A tribe or parents of an Indian child can petition any court to invalidate

Chapter V - Indian Child Welfare Act

proceedings that did not comply with the law. Invalidated proceedings can substantially delay permanency for a child, disrupt foster or adoptive placements, and potentially return a child to abusive or neglectful parents.

Laws Governing Child Protective Services

Both federal and state laws set timelines and expectations for child abuse and neglect proceedings. ICWA does not substantively change those timelines. However, ICWA prohibits the state from holding a custody hearing until ten days after the parents or tribe receives notice of a hearing, and grants a tribe or parents up to twenty additional days to prepare for a hearing. ICWA also sets a higher burden of proof for foster and adoptive placements, termination of parental rights, and efforts to provide services to prevent removing Indian children from homes or for reunifying Indian children with families.

The Montana Constitution Protects Native American Culture and Customs

The Montana Constitution provides protections to tribal governments. Article X, Section 1 of the Constitution addresses the need “to preserve the unique cultural heritage and integrity of the American Indians.” This language places greater responsibility on the state to conduct CPS activities that affect tribes and their members with respect to cultures and customs.

The Montana Supreme Court Has Strictly Interpreted ICWA

Numerous district court decisions related to child abuse and neglect proceedings involving Indian children have been appealed to the Supreme Court. Supreme Court opinions have addressed a variety of child abuse and neglect proceedings, including foster and adoptive placements. Recognizing a constitutional duty to preserve Native American cultures and customs, Supreme Court decisions have provided the state clear direction that the Court takes a strict interpretation of ICWA, and failing to strictly follow the law may result in lower court decisions being reversed or remanded back to the lower court for further action.

Chapter V - Indian Child Welfare Act

Issues Related to ICWA

Subsequent sections of this chapter address questions about the application of child protective services for Native American children and families. Topics addressed are:

- ▶ Compliance with statutory requirements.
- ▶ CFSD communication and coordination with tribes.
- ▶ Documentation supporting CFSD actions.
- ▶ Services provided to Native American families.
- ▶ CFSD compliance with ICWA-preferred placements.
- ▶ CFSD supervision of ICWA cases.

Is There Compliance With Statutory Requirements?

As previously stated, ICWA does not substantially change timeline requirements for ICWA cases, and findings presented in Chapter III also apply to ICWA cases. A substantive difference is that ICWA requires a qualified expert witness testify about a tribe's culture regarding child care and family structure at all court hearings addressing placement of an Indian child in an out-of-home placement and termination of parental rights. Congress requires this expert testimony to help remove any cultural biases by courts and social workers.

Qualified Expert Witnesses Do Not Always Testify At Hearings

Based on our review of ICWA files and interviews, we identified widespread noncompliance with the requirement a qualified expert witness testify at child abuse and neglect hearings. While CFSD has responsibilities for case administration, both county attorneys and district court judges have responsibilities for assuring a qualified expert witness testifies at child abuse and neglect hearings. If a qualified expert witness was not at a court proceeding, we noted instances when a district court continued a hearing without an expert witness. The related causes for this noncompliance are:

- ▶ Misperceptions about the need for qualified expert witnesses – Some social workers, county attorneys, and district court judges believe a qualified expert witness is only required at termination of parental rights hearings.
- ▶ Limited numbers of identified qualified expert witnesses – County attorneys and CFSD generally rely on tribal members to testify about family structure and parenting in Native American

Chapter V - Indian Child Welfare Act

CFSD is Addressing This Issue

homes. However, there were limited numbers of persons identified as willing to testify at child abuse and neglect proceedings. Finding qualified expert witnesses can be further complicated in communities that are extended distances from tribes or have small Native American populations.

The Department of Justice is Also Working to Improve Compliance

CFSD has identified a need to improve CPS compliance with qualified expert witness requirements. In 2001, CFSD began addressing the issue by compiling a list of individuals willing to testify as qualified expert witnesses. In January 2002, CFSD had identified 20 persons willing to testify as qualified expert witnesses, and published their names in a manual that was distributed to CFSD field offices and county attorneys. The manual provides a biography for each person, including their expertise or affiliation with specific tribes. CFSD has identified at least one expert witness from each tribal nation. CFSD also sponsors training for qualified expert witnesses that includes information about the CPS process and participation in mock custody hearings.

Recognizing compliance with ICWA has been problematic, the Department of Justice developed the [Montana ICWA Handbook](#), a primer for legal professionals and CFSD personnel. The Handbook provides descriptions of ICWA's legal requirements, as well as references to court decisions in Montana and other states that affect compliance with the Act. The Department of Justice presented the handbook and related training to county attorneys at a conference in the fall of 2001.

Conclusion: CFSD, District Courts and County Attorneys Need to Expand Emphasis on ICWA Compliance

Since many court hearings involving Indian children do not include testimony from a qualified expert witness, there is an increased risk Indian children will be removed from a home, or that parental rights will be terminated, based on cultural standards of a non-Indian society. To improve the state's compliance with ICWA, there needs to be expanded emphasis on complying with this requirement, including continued efforts to identify and recruit qualified expert witnesses and training for CPS system personnel about the requirements.

Chapter V - Indian Child Welfare Act

Recommendation #10

- A. We recommend CFSD and the Department of Justice continue to coordinate efforts to identify and recruit qualified expert witnesses.**
- B. We recommend CFSD, Department of Justice, and the Supreme Court re-emphasize ICWA's qualified expert witness requirements as part of their training programs.**

What Coordination Occurred Between CFSD and Tribes When Native American Children Were Removed From Parental Custody?

Congress has expressed clear preference for keeping Indian children with their families by deferring to tribal judgment on matters concerning custody of tribal children. The mandate confers upon the state special obligations for determining whether a child removed from a home is a member of a tribe, and coordinating CPS activities with tribes. This section reports on CFSD communication and coordination with tribal governments when Indian children are removed from their homes.

To evaluate communication and coordination efforts with tribes, we interviewed CFSD personnel and tribal leaders and representatives. We also reviewed case files to determine whether social worker activities comply with CFSD policies and expectations for tribal coordination.

Improvements Needed in Communication and Coordination

We noted CFSD provides technical assistance and training opportunities to tribal governments. However, we noted needed improvement in two areas related to communication and coordination. These include: coordination in development of CFSD policies and procedures for managing ICWA cases; and assuring tribes are aware of state custody proceedings involving tribal members. The following sections describe our related findings.

- Tribes have alleged minimal input on significant changes to CFSD practices – For example, in January 2002, CFSD implemented a new child abuse and neglect reporting system called Centralized Intake (CI) without actively seeking tribal input into the development or implementation of the new system. Historically, persons reported abuse and neglect to a local CFSD

Chapter V - Indian Child Welfare Act

office, which decided how to respond to a report. Implementation of CI changed that process, requiring reporters to call a toll-free number in Helena; now CI social workers determine how to respond to reports, and then refer cases to local offices for prescribed action. Tribal members, many of whom had established relationships with local offices, were concerned about CI due to: the willingness of tribal members to contact a centralized state number, potential delays in obtaining child protective services, and the impact on tribal resources.

CFSD officials believe tribes had numerous opportunities for input into development and implementation of CI through the legislative hearing process and through membership in various department-sponsored advisory councils.

- ▶ Tribal notification when an Indian child is removed from a home – CFSD policy requires social workers formally notify tribes when they remove an Indian child from a home. However, we noted instances where formal notifications were not sent, were substantially delayed, or were not documented. Additionally, tribal representatives expressed frustration that CFSD personnel do not make courtesy calls to tribes about some ICWA cases. Notification is essential to a tribe's ability to respond when children who are tribal members enter the state CPS system.
- ▶ Notification of child custody legal proceedings – We noted instances where tribal notifications were not sent or case files had no documentation that tribes were notified of pending legal proceedings. Failing to notify tribes of pending proceedings denies them the right of intervention granted by ICWA. Although county attorneys are responsible for notifying tribes of court activities, CFSD policy requires social workers to ensure that tribes are aware of legal proceedings.
- ▶ Misperceptions about applicability of ICWA and tribal membership – Based on interviews with CPS participants, there are misconceptions about if or when ICWA applies to a case. Some social workers said ICWA does not apply if they cannot determine a child's tribal membership status or if tribes do not respond to requests for information or intervene in a case. However, ICWA applies to all cases involving Indian children, regardless of a tribe's involvement with or intervention in a case. If the state is unable to obtain a conclusive determination from a tribe regarding a child's tribal membership status, ICWA allows the BIA to make a conclusive determination, absent a tribe's contrary determination. Additionally, CFSD policy states a

Chapter V - Indian Child Welfare Act

social worker should contact the BIA for assistance in determining whether ICWA applies to a case.

- ▶ Tribal governments may have limited case involvement – File reviews and interviews indicated tribal governments are sometimes either slow to respond, or do not respond, to CFSD requests for information or assistance. Tribal representatives and leaders acknowledged this occurs, and said availability of tribal resources sometimes impacts their willingness or ability to intervene. Tribes may have limited resources for providing services to families or for intervening in child custody cases. In other cases, tribes may not be able to provide care to children with special medical or mental health needs. In some cases, a tribe's willingness to intervene may depend on a child's or family's ties to a tribe or reservation. Tribal representatives also stated they are less likely to expend tribal resources on cases under state jurisdiction as long as they agree with CFSD's case plan.
- ▶ CFSD's policy and procedure manual does not fully address some elements of ICWA – Information not discussed includes:
 - Application of prevailing cultures and standards to ICWA cases.
 - Descriptions of the level of effort social workers must apply to ICWA cases, and what that may entail.
 - Voluntary foster care placements and relinquishments by parents of Indian children.
- ▶ ICWA checklist is not consistently used – CFSD implemented an ICWA checklist in October 2001 to promote compliance with the Indian Child Welfare Act. CFSD policy requires social workers to complete the checklist for each child removed from parents or guardians to determine whether ICWA applies to a case, and guides social workers through other ICWA requirements. However, reviews of case files initiated after October 1, 2001 indicated inconsistent use of the checklist by field personnel. In several offices, social workers said they were not using the checklist, or were unaware of the checklist.
- ▶ CFSD ICWA team is inactive – CFSD assigned a representative from each region to a statewide “ICWA team.” However, the team had not met for approximately one year at the time of the audit. Additionally, our interviews indicated ICWA team members had minimal responsibilities for verifying social worker compliance with ICWA.

Chapter V - Indian Child Welfare Act

CFSD Provides Tribes With Program and Technical Assistance

CFSD and tribal personnel stated the division does provide some program and technical assistance to tribes. Tribal governments may send their social services program staff to CFSD's Montana Child Abuse and Neglect (MCAN) training. CFSD has also provided tribes technical assistance for implementing CAPS and increasing compliance with federal IV-E foster care funding requirements.

Other Options for Improving CFSD and Tribal Communication and Coordination

We asked state and tribal officials, and other professionals with expertise in Indian child welfare about other options for improving communication and coordination with tribes to increase compliance with ICWA. The following sections present some potential options that may improve communication and coordination between the state and tribal governments.

- ▶ Establish an ICWA specialist in each region – CFSD has largely relied on a statewide ICWA specialist to advise and coordinate activities with tribes. Regional ICWA specialists could serve as direct tribal and BIA liaisons for social workers in a region. Additionally, these positions could also serve as tribal liaisons for CFSD personnel in other regions. We also noted other states have implemented the concept of regional ICWA specialists.
- ▶ Establish Native American program units – Currently, supervisors may assign an ICWA case to any social worker, without specific consideration of a social worker's knowledge or experience working with Indian families, children, or ICWA. The BIA and a committee of tribal representatives have proposed CFSD implement Native American units in some communities. Social workers assigned to a "Native American Unit" would be specially trained to work ICWA cases. Because of the complexities of ICWA, and differences in cultures and practices, development of a specialized unit may improve compliance with ICWA. From a practical perspective, this option may be viable only in larger communities, or in communities with substantial numbers of Indian children in state custody.
- ▶ Re-establish CFSD's social worker cultural exchange program – Representatives from one reservation requested CFSD re-establish its cultural exchange program. This program allowed division and tribal social services personnel to experience working in tribal or state systems, respectively.

Chapter V - Indian Child Welfare Act

- ▶ Develop a formal appeal process for tribal governments – According to tribal representatives, tribes have limited recourse, other than litigation, to request a review of a social worker's ICWA case activities. Establishing a formal process through which tribes can request a review of case activities and placements could facilitate conflict resolution in a less litigious manner. One potential avenue of appeal could be the existing substantiation review panel.
- ▶ Modify the ICWA Checklist – We requested several non-departmental persons with expertise in ICWA to review CFSD's ICWA checklist for completeness. We also compared CFSD's checklist with those used in other states and with ICWA requirements. The existing checklist may improve division compliance with ICWA. However, audit work indicated the checklist is not complete and should be expanded to provide greater assurance social workers fully comply with ICWA. Areas for improvement include:
 - o Verifying a child's residence – Residency affects whether the state or tribe has jurisdiction over the case. Children even temporarily in non-reservation areas remain under the jurisdiction of a tribe.
 - o Increase checklist detail – Many items on the checklist require only a yes or no response by a social worker. More detailed information such as documenting dates or providing a brief narrative of case activities would provide greater assurance good cause or active efforts are appropriately addressed. More detail would also help supervisors evaluate a social worker's activities for compliance with ICWA requirements.
 - o Require documentation for all legal proceedings and placements – The checklist only has space for documenting an initial proceeding or placement. However, child custody cases commonly have multiple legal proceedings, and often more than one placement. CFSD should design a checklist that requires social workers to document required activities for each proceeding and placement.
 - o Supervisory review – Require supervisors to review and sign the checklist to verify compliance with ICWA and CFSD policy.

Chapter V - Indian Child Welfare Act

Conclusion: CFSD Communication and Coordination With Tribes Has Improved, But Additional Efforts Are Necessary

CFSD has implemented some practices to coordinate training for and technical assistance to tribal governments. CFSD efforts to coordinate policies, procedures, and case management activities with tribal governments are viewed as less consistent, although tribal representatives stated CFSD efforts have improved in recent years. CFSD has generally considered policy and procedure development as internal activities specific to the division, and has not actively pursued coordinating these activities with tribal social service agencies. However, division officials also believe significant policy and procedures changes are discussed with their various advisory councils which include tribal representatives. With regard to ICWA case management, there are variations in communication and coordination efforts among regions and between staff. Causes for differences include factors such as limited oversight by supervisors to verify compliance, misunderstandings of ICWA requirements, and inconsistent compliance with CFSD policies and procedures.

Good management practices suggest when an organization's activities impact another organization or government, both agencies should coordinate those activities, including development and implementation of related policies and procedures. Poor communication and coordination can result in CFSD policies and procedures that do not address tribal needs or expectations. We believe modifying CFSD policies and procedures and implementing best management practices described above can improve communication and coordination with tribes.

Chapter V - Indian Child Welfare Act

Recommendation #11

We recommend CFSD:

- A. Assure that tribal governments have sufficient opportunities to comment on policy and procedure development affecting tribal activities.**
- B. Increase efforts to coordinate case management activities with tribal governments.**
- C. Review policies and procedures to assure all critical elements of ICWA are addressed in the manual and ICWA checklist.**

Did Case File Documentation Support CFSD Actions/Decisions?

In any child abuse and neglect proceeding, CFSD must provide the district court with sufficient evidence demonstrating the need for removing a child from a home and placing that child in foster care placement. Division files generally provide information supporting social worker decisions to remove Indian children from homes and proceed with child abuse and neglect proceedings. However, documentation issues presented in Chapter III relating to better documenting critical decisions, placements, and other case activities also apply to ICWA cases. Supporting documentation is just as important for ICWA cases for demonstrating compliance with standards for evidence and reunification efforts.

Recommendation #12

We recommend CFSD establish specific policies and procedures for required case file documentation to improve consistency of ICWA information and to better support social worker actions and decisions.

What Services Were Provided to the Family?

Both Montana statute and ICWA require CFSD provide remedial efforts to prevent a removal, and rehabilitative efforts to reunify a family. As with evidentiary standards, ICWA sets a higher minimum level of effort for cases involving Indian children than Montana statutes requires for other child abuse and neglect cases. While Montana statute requires CFSD make “reasonable efforts” to

Chapter V - Indian Child Welfare Act

provide remedial and rehabilitative services, ICWA requires “active efforts.” In most instances, ICWA cases require more effort on the part of social workers to provide these services.

Levels of Effort Provided in ICWA Cases is Not Clear

CFSD efforts to provide remedial and rehabilitative services varied significantly across the state. Noted issues included:

- ▶ Inconsistencies in service provisions and treatment plans – Issues presented in Chapter III, such as inconsistent use of family group decision-making and lack of specific treatment plan requirements, also apply to ICWA cases.
- ▶ Limited documentation of efforts to provide services – Some files had limited or no documentation of efforts to provide services to Native American families. Since child custody cases are commonly transferred among social workers because of personnel turnover, extended absences, and case transfers among offices, limited documentation can adversely affect future case activities. Additionally, the higher evidentiary and case management standards mandated by ICWA increase the need for accurate documentation to support division actions in child abuse and neglect proceedings. According to a Montana Department of Justice attorney who has litigated ICWA cases for the state, poor documentation has a significant adverse impact on the state’s ability to defend CFSD decisions and may result in district court orders being vacated.

CFSD Staff Offer Native Americans Opportunities to Incorporate Spiritual Beliefs and Customs Into Treatment and Case Activities

We also examined whether CFSD conducts activities and provides services in a manner sensitive to or reflective of Native American cultures and customs. Audit work included reviewing case files of Indian children and interviews with division personnel. CFSD personnel stated consideration of Native American cultures and customs is important to case management. File documentation generally verified CFSD provides services that address Native American cultures and customs. Examples identified during audit work included:

- ▶ CFSD accepts culturally based treatment and programming services offered by tribal governments and other Native American organizations.

Chapter V - Indian Child Welfare Act

- ▶ Family group decision-making coordinators offer Native American participants opportunities to incorporate cultural or spiritual practices into family conferences.
- ▶ Family group decision-making coordinators may seek assistance from tribal social services personnel when planning family conferences.

Conclusion: CFSD Should Better Document Active Efforts to Provide Services and Reunify Families

Interviews and some case file documentation indicate CFSD personnel recognize the need to consider incorporating Native American culture and customs into case activities. However, in some instances, file documentation provided little information about social worker activities and efforts to provide services. Because ICWA requires CFSD to provide “active efforts” for reunifying Indian families, failure to appropriately document case activities can adversely affect future case management decisions and child abuse and neglect proceedings.

Recommendation #13

We recommend CFSD increase its focus on having documentation that clearly demonstrates the active level of effort required for ICWA cases.

With Whom Was the Child Placed in Foster Care?

Since the general purpose of ICWA is to preserve Native American families, ICWA mandates preference for adoptive and foster home placements be granted to an Indian child’s family, other Native American homes, or homes preferred by a child’s tribe. The following sections provide an overview of placement preferences and reports on CFSD foster and adoptive placement activities.

ICWA Foster Care Placement Preferences

ICWA placement preferences for Indian children placed in foster care are:

1. With a member of the child’s extended family;
2. In a foster home licensed, approved, or specified by the Indian child’s tribe;

Chapter V - Indian Child Welfare Act

3. In an Indian foster home licensed or approved by an authorized non-Indian licensing authority; or
4. An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

ICWA recognizes in some instances foster care placements with Native American foster homes may not be practical, possible, or in the best interests of a child. In such instances, the state must demonstrate "good cause" as to why a preferred placement was not used. BIA guidelines note good cause must be due to extraordinary needs of a child or that diligent efforts to find a preferred placement are unsuccessful.

Compliance Efforts With ICWA Foster Care Placement Preferences Could be Improved

During audit work we noted efforts could be improved to comply with ICWA placement preferences. The following sections discuss the issues identified.

- ▶ Inconsistent efforts to use preferred placements – Several case files indicated limited or no active effort to identify or use ICWA-preferred placements. In one case, a social worker did not contact identified family members as a potential foster care placement. In another case, CFSD delayed placing a child with a non-custodial parent.
- ▶ Limited documentation of efforts to place Indian children in preferred placements – Although CFSD has the burden of proof to demonstrate "good cause" for not using an ICWA-preferred placement, some files had limited documentation explaining why preferred placements were not used. Examples of problems identified from file reviews included:
 - No documentation of efforts to identify kinship or other preferred placements.
 - No documentation explaining why a social worker did not consider or use identified family members as a kinship placement.
 - Social workers did not document informal agreements with tribal social services personnel to place a child in a non-preferred placement.
- ▶ Inconsistent understanding of "good cause" exceptions to preferred placements – Some CFSD staff do not fully understand the "good cause" exceptions to ICWA-preferred placement. If a

Chapter V - Indian Child Welfare Act

home is not a preferred placement under ICWA, but is otherwise an appropriate placement, some social workers expend limited additional effort to find a preferred placement, unless a kinship placement is available.

- ▶ Limited availability of Native American foster care homes – Family resource specialists across the state said there are few CFSD licensed Native American homes available for Indian children in state custody. For example, in the Billings region, which has a large Native American population, there are only four licensed Native American foster homes. A supervisor stated they do not always make an active effort to find a Native American foster home because there are so few licensed homes available.
- ▶ CFSD has not developed a strategy for recruiting Native American foster homes – Overall, CFSD foster care recruiting relies primarily on licensed foster and adoptive parents to refer family and friends to the program. Tribal representatives indicated some Native Americans are unfamiliar with and frustrated by CFSD licensing activities. Therefore, there is limited word-of-mouth recruiting occurring among Native Americans. Tribal representatives and division personnel stated the division might need to implement different strategies to successfully recruit Native Americans as foster parents. However, interviews with tribal and BIA representatives indicated they also have limited numbers of Native American foster homes accessible for their social service agencies. Additionally, a private sector organization specializing in providing foster care for tribal governments is unable to fully support its program needs without using non-Native American families to provide care for Native American children.

CFSD Should Explore Options for Increasing Recruitment of Native American Foster Homes

To increase compliance with ICWA placement preferences, CFSD needs to improve its efforts to identify and recruit Native Americans willing to be foster parents. During our interviews, observations, and research, we identified modifications to current CFSD practices that could increase availability of Native American homes for Indian children in state custody.

- ▶ Encourage tribal governments to increase recruiting and licensing efforts near reservations – ICWA authorizes tribal governments to license tribal foster homes on or near reservations. For ICWA purposes, “near” a reservation generally means areas adjacent to a reservation that could be reasonably

Chapter V - Indian Child Welfare Act

served by tribal social services agencies. For example, the Crow or Northern Cheyenne tribal governments could probably license foster homes in the Billings area.

- ▶ Coordinate recruiting and licensing efforts with tribal governments – According to division and tribal personnel, there are no coordinated efforts to recruit Native Americans as foster parents, either on or off reservations. Coordination may include working with tribes to modify and change the focus of some CFSD foster parent training program and licensing activities for Native Americans.
- ▶ Contract for recruiting and licensing services with private sector entities – At least one private sector agency provides therapeutic foster care placements with an emphasis on placing Indian children with Native American families. A private sector entity could potentially offer a more focused effort on recruitment and retention of foster homes that are either Native American or acceptable to tribes because of training and cultural sensitivity.

Other Options Should Also Be Considered

Despite any future efforts to recruit and train more Native Americans as foster parents, it is likely the demand for Native American foster homes will continue to exceed availability. Another option for the department is to coordinate with tribal governments to increase Native American cultural training for non-Native American foster homes. The following presents options for improving tribal acceptance of non-Native American foster homes.

- ▶ Develop specialized foster homes for Indian children – CFSD's foster care training curriculum includes approximately an hour of cultural awareness training. However, there is no specialized training related to customs and cultures of Montana tribes. Coordinated CFSD and tribal efforts to focus cultural training, particularly for tribes heavily represented in an area, could increase tribal acceptance of some non-Native American foster homes. One region recently incorporated additional cultural training for foster families into its curriculum.
- ▶ Coordinate a mentoring program for foster parents caring for Indian children – A mentoring program, with support from tribal governments, would recruit tribal members to provide advice and assistance to foster parents caring for Indian children.

Chapter V - Indian Child Welfare Act

- ▶ Require foster parents caring for Indian children to provide cultural experience opportunities for Indian children –
Potentially, CFSD could compensate foster parents for costs associated with bringing Indian children to Native American cultural and spiritual events.

Conclusion: CFSD is Generally Compliant With ICWA Placement Preferences But More Emphasis is Needed in Documentation and Recruitment Areas

In summary, CFSD generally attempts to place Indian children in ICWA-preferred placements. In many cases, CFSD placed Indian children with immediate or extended family, or in homes requested by the parents. However, the division still places many Indian children in non-Native American foster homes. In some cases, social workers may not actively seek out preferred placements, or they may have limited understanding of what constitutes a “good cause” exception. Overall, documentation of placement decisions of social workers is not comprehensive. Additionally, CFSD has a limited number of licensed Native American homes, or non-Native American homes approved by tribes. We believe CFSD, with assistance from tribal governments, could improve its training to make some non-Indian foster and adoptive placements more acceptable to tribal governments.

According to CFSD, for FY 2001, 27.5 percent of the children in state-supported foster care were Native American. Given the substantial number of Native American children in foster care and state and national policy to make active efforts to place Indian children in Native American foster homes, the state has an obligation to recruit Native American families as foster parents. To meet the intent of ICWA, the division needs to further address these areas to improve ICWA compliance.

Chapter V - Indian Child Welfare Act

Recommendation #14

We recommend CFSD:

- A. Re-emphasize ICWA placement preferences as part of CFSD's training curriculum.**
- B. Develop a methodology for improving its documentation supporting reasons for not using ICWA-preferred foster care placements.**
- C. Increase emphasis on recruiting tribally accepted foster homes, which should include coordinating recruiting and licensing activities with tribal organizations.**

ICWA Adoptive Placement Preferences Were Also Reviewed

ICWA also requires the state to follow specific placement preferences when placing Indian children into adoptive homes. Adoptive placement preferences are:

1. A member of the child's extended family, including non-Native American family members;
2. Other members of the child's tribe; or
3. Other Indian families.

As with foster care placements, CFSD must demonstrate "good cause" to not follow these placement preferences. In adoptive cases, "good cause" status is also granted at the request of parents or children when they are of sufficient age.

To evaluate CFSD compliance with ICWA's adoptive placement preferences, we randomly selected sixteen of forty-nine finalized adoptive placements of Indian children for fiscal year 2001. Of these sixteen cases, the division placed ten children in kinship or Native American homes. In one case, we were unable to determine whether the placement complied with placement preferences. Four of the sixteen adoptive placements were not in an ICWA preferred placement, but file documentation suggested good cause existed. In these four cases we documented:

Chapter V - Indian Child Welfare Act

1. A tribe informed the department the child was not eligible for enrollment.
2. A tribe stated it did not want to be involved in the case.
3. A tribe did not respond to division requests for information.
4. A tribe did not oppose the placement since the placement was with a sibling already in the home.

In another case, CFSD's pre-adoptive placement was with a non-preferred placement. In this case, the county attorney and court approved CFSD's placement, citing "good cause" existed to not place the child with members of the extended family. The child's extended family and tribe appealed the district court's decision to the Montana Supreme Court. The Supreme Court overturned the district court decision, and ordered CFSD to proceed with adoption by members of the child's extended family.

Conclusion: CFSD Adoptive Placements Comply With ICWA Placement Preferences

CFSD generally complies with ICWA adoptive placement preferences. In most cases where CFSD did not follow ICWA preferences, there appeared to be good cause justifying why preferences were not followed.

What Evidence of Supervisory Review Exists?

We reviewed ICWA files for documentation of supervisory review. Supervisory activities reported in Chapter III also apply to ICWA cases. Supervision is a critical function to assure social workers manage all cases according to CFSD policies, procedures, and professional standards. We believe ICWA cases require supervisory emphasis because of the higher burden of proof standards and level of effort required to prevent the breakup of Indian families. Our review did not suggest such emphasis is given to ICWA cases.

Chapter V - Indian Child Welfare Act

Recommendation #15

We recommend CFSD:

- A. Clarify policy on the type and frequency of supervisory review of ICWA case files.**
- B. Expand CFSD policy to require supervisors to sign off on the ICWA checklist.**

Tribal Governments Can Help Improve CFSD Compliance With ICWA

We believe Montana's tribal governments can help CFSD improve its compliance with ICWA. While ICWA places the burden on the state to comply with the Act, and federal law does not obligate tribes to assist the state, tribal governments do bear some responsibility for assisting the state in efforts that promote and protect their cultures and customs. Increased tribal efforts to respond to CFSD requests for information, recruit and train foster parents, and generally help CFSD coordinate case activities when possible can only increase CFSD's ability to serve Indian children in state custody.

Chapter VI - Child Protective Services Program Management

Introduction

This chapter provides findings and recommendations related to the fourth and fifth areas within House Joint Resolution (HJR) 32. The Child and Family Services Division (CFSD) receives around 10,000 child abuse and neglect reports per year. The division's investigation and ultimately the resolution of these reports, is largely determined by field staff who by necessity must have a substantial amount of flexibility and discretion to efficiently and effectively do their jobs. On the other hand, in order to promote equality and uniformity in their decision-making, management controls that provide clear direction for the workers need to be in place. While we noted some uniformity deficiencies and weaknesses in select management controls, overall the CFSD has established and initiated sound organizational controls. The following identifies some of the controls recently established to strengthen the CFSD:

- ▶ Division goals and objectives which are regularly measured and modified.
- ▶ A Division Business Plan which outlines/describes efforts to address and measure the goals and objectives.
- ▶ Scheduled management team meetings to discuss issues and business plan status.
- ▶ Scheduled supervisor-level meetings to obtain feedback and input on proposed organizational modifications and operational status.

Additionally, within the past year the CFSD has initiated a Centralized Intake Unit to establish a more uniform process for the reporting and investigation of child abuse and neglect cases.

Training

The fourth area under HJR 32 (paraphrased) reads:

- ▶ Determine the extent to which the training of social workers, county attorneys, and courts is relevant regarding the state and federal provisions pertaining to child protective services.

Chapter VI – Child Protective Services Program Management

In this area, our review primarily focused on CFSD personnel because county attorneys and courts are not within the department's authority. However, CFSD does provide training opportunities to these two stakeholders. The following sections provide details on our findings and recommendations regarding training.

More Training is Needed for CFSD Staff

All social workers must currently complete the Montana Child Abuse and Neglect (MCAN) training curriculum covering topics such as identification of child abuse and neglect, investigation techniques, development of treatment plans, ICWA requirements, and family group decision-making. However, this training is primarily designed for new social workers hired by the division. The CFSD has made some effort to have ongoing training for other staff by providing annual policy training, making information such as training videos available for self-study, and allowing supervisors to provide and identify training for individual social workers. As a division, CFSD does not have a systematic approach to identify or provide consistent or uniform training to social workers and social worker supervisors after their initial training. For the most part, the division has "de-centralized" its ongoing training program and relies upon each region to identify and provide training to social workers and supervisors. In addition, attendance at training is not formally monitored, so while training opportunities may be provided, social workers and supervisors may not complete the training. These situations have created a lack of uniformity in the amount and types of training social workers and supervisors receive. According to some CFSD officials, a major shortcoming in their operation is the division has no ongoing training requirements for staff.

Our review of CPS case files identified several inconsistencies in the CPS process that indicate social workers and supervisors would benefit from additional training. These inconsistencies included case file documentation, treatment plan development, fair hearing process, and supervisory review of cases.

Chapter VI – Child Protective Services Program Management

National Association of Social Workers and Department of Labor Set Training Standards

The National Association of Social Workers (NASW) is a membership organization of professional social workers. The NASW works to enhance the professional growth and development of its members and create and maintain professional standards. According to the NASW, ongoing training of social workers is an essential activity, so the organization developed standards to guide and facilitate social workers involvement in continuing education. The NASW recommends social workers receive 48 hours of training every two years. The Department of Labor and Industry (DOLI) licenses social workers employed in Montana's private sector. As part of its licensing requirements, the DOLI requires social workers to obtain 20 hours of training each year. At present, CFSD social workers are neither required to follow NASW standards nor be licensed. In addition, there is no specific division policy on continuing professional education for social workers or social worker supervisors.

Stakeholders Believe More Uniform Staff Training is Needed

We interviewed various stakeholders involved in the CPS process to determine if they had concerns with training received by CFSD staff. Some county attorneys and officials from the Child Protection Unit believe social workers and supervisors need additional training in areas such as documenting evidence and testifying in court. In preparation for an upcoming federal review of the CPS process, a statewide assessment was held. This assessment discussed strengths and weakness of the CPS process. Various stakeholders expressed concern the limited amount of training received by CFSD staff is a weakness. Specifically, the stakeholders discussed lack of uniformity in staff training and that more effort is needed to establish a statewide training program.

Training Would Improve Supervisory Skills

Social worker supervisors are the first-level of checks and balances within the CPS system. It is the responsibility of supervisors to evaluate the legitimacy of cases, supervise social workers, and make sure cases are handled in compliance with state and federal laws and CFSD policies. Social workers are typically promoted into supervisory positions because of experience and quality of work, but are provided with little formal supervisory training once they become

Chapter VI – Child Protective Services Program Management

supervisors. Some supervisors still approach cases as a social worker instead of a supervisor whereby the focus is on child protection rather than assuring critical decisions are properly supported. As a result, case management problems have not always been addressed as needed. Chapters III and V of the report described specific concerns with the inconsistency of supervisory review that exists on CPS cases. The division has not developed a training program for supervisors to help them improve their supervisory skills.

CFSD Should Set Training Standards and Create a Standardized Ongoing Training Program

CFSD has a Training Bureau responsible for developing training programs. However, the bureau does not currently use job-related information to determine statewide training needs, develop an ongoing, systematic staff training program, or monitor attendance at training opportunities. Job-related information could be obtained to help develop systematic training programs. For example, if performance appraisals were completed on both supervisors and social workers, this information could be used to identify training needs on a statewide basis. Other sources of information available for use in developing training programs could include outcomes from the department's internal review of substantiation appeals and the fair hearing process. Additionally, input could be sought from county attorneys, district court judges, and service providers who work with social workers and supervisors on a daily basis. Establishing statewide training programs from this information could help reduce inconsistencies that currently exist in the CPS process.

CFSD has not established minimum training standards for social workers or supervisors once they have completed the initial training curriculum. The NASW recommends agencies have policies in place that focus on training needs of social workers. This includes conducting annual assessments of social worker training needs and establishing a minimum standard of training hours that should be completed. CFSD needs to establish a minimum number of training hours that social workers and supervisors should receive and initiate a central monitoring function to assure training is completed.

Chapter VI – Child Protective Services Program Management

Recommendation #16

We recommend the CFSD:

- A. Establish minimum ongoing training standards for social workers and supervisors through the use of:**
 - performance appraisals
 - input from division processes and personnel
 - input from external sources such as judges and county attorneys
- B. Develop a centralized process to initiate a standardized ongoing training curriculum to address established standards and to monitor staff completion of the curriculum.**

County Attorney and District Court Training

We identified inconsistencies in practices and procedures as well as some noncompliance with statutory hearing and timeline requirements throughout the state. One reason for these inconsistencies appears to be a need for more training and awareness of CPS-related issues by some county attorneys and district court judges.

Historically, CFSD has offered training to legal professionals including county attorneys, private attorneys, and judges regarding legislative changes. When child protective services statutes are enacted or modified by the legislature, CFSD personnel provide a synopsis of the changes and how the changes impact operations. CFSD also presents information on legislative changes at annual county attorney conferences. In addition, CFSD and the Montana Department of Justice published and presented an ICWA Handbook at the 2001 Annual County Attorney Conference. There are also seminars and conferences coordinated by the Department of Justice and the Montana Supreme Court that offer information on child abuse and neglect for judges.

While it appears there are training opportunities available to county attorneys and district judges, participation in CFSD-sponsored events is inconsistent. For example, attendance by county attorneys and judges at the already noted stakeholder's assessment meeting was

Chapter VI – Child Protective Services Program Management

limited. In September 2001, CFSD conducted training on statutory changes via the Montana Educational Telecommunications Network (METNET) at 10 locations throughout the state. Based on CFSD records, attendance by judges and county attorneys at this training session appeared to be reasonable by county attorneys, but there was poor attendance by district court judges.

Based on interviews, we found attendance by legal professionals (judges and county attorneys) at CPS-related training is determined by a number of factors including:

- ▶ workload,
- ▶ overall level of interest in the topic(s), and
- ▶ who is providing/presenting the information.

While CFSD cannot control county attorney or district court workloads or interest in CPS matters, one possible method for improving interest and attendance at CFSD-sponsored events is to have more presentations by legal professionals who work with CPS cases on a regular basis. The consensus being, these individuals can better relate to the issues/problems faced by their peers than CFSD personnel, and therefore attendance would increase. Additionally, training should be more regionally based to allow more access and opportunity than is currently provided with some single location events.

Conclusion: Additional Stakeholder Training is Needed

CFSD has made recent efforts to learn about strengths and weakness of the CPS system by conducting a statewide assessment meeting and offering more training for legal professionals. However, we believe the level of emphasis given to training and training attendance by all stakeholders needs to be increased. The division needs to increase communication and coordination regarding training with the Department of Justice and Montana Supreme Court who, respectively, have defacto authority over county attorneys and district court judges.

Chapter VI – Child Protective Services Program Management

Recommendation #17

We recommend the CFSD, Department of Justice, and Supreme Court seek ways to encourage and expand training for legal professionals in CPS-related topics.

Appendix A
House Joint Resolution 32

2001 Montana Legislature
HOUSE JOINT RESOLUTION NO. 32
INTRODUCED BY N. BIXBY



A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A PERFORMANCE AUDIT OF THE CHILD PROTECTIVE SERVICES SYSTEM BY THE LEGISLATIVE AUDIT DIVISION.

WHEREAS, it is the policy of the State of Montana, as stated in section 41-3-101, MCA, to protect family unity, to provide for the protection of children who may be adversely affected by those responsible for their care and protection, and to ensure that whenever removal from a home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage, whenever appropriate; and

WHEREAS, Congress enacted the Indian Child Welfare Act of 1978 (ICWA) to prevent the breakup of Indian families and to give Indian tribes a role in matters concerning custody of Indian children, and the ICWA must be recognized in child abuse and neglect proceedings, such as foster care placement, termination of parental rights, and adoptive or preadoptive placements, that involve Indian children; and

WHEREAS, although section 41-3-109, MCA, states that proceedings that involve an Indian child are subject to the ICWA, there are numerous exceptions in the ICWA that allow exclusive or concurrent jurisdiction of either the state or the Indian tribe, dependent on domicile, custody, parental petition, and "good cause", which may lead to uneven interpretation and application of the law and occurrences in which the Indian tribes are denied jurisdiction; and

WHEREAS, the federal Adoption and Safe Families Act of 1997 was also enacted to provide for child safety and for an accelerated resolution of issues to facilitate fewer temporary placements and to lead, ideally, to permanent placements for children in need of foster care and protective services; and

WHEREAS, the application of the power of the state to intervene in families is a difficult judgment call that the Department of Public Health and Human Services is required to make in order to protect children and families; and

WHEREAS, the social workers who make those judgment calls do so within the context of a local community with law enforcement, the County Attorney's office, and the court, but those decisions must be reviewed to ensure that the law is being applied equally statewide; and

WHEREAS, significant concerns have been raised regarding the operation and inadequate funding of the child protective services system, and in response, the Legislature considers that it is appropriate to call for a performance audit by the Legislative Audit Division.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Audit Committee prioritize a performance audit of child protective services in the Department of Public Health and Human Services, including but not limited to:

- (1) the provision of child protective services across the state in regard to family-based services, intervention and treatment, investigations of abuse and neglect reports, out-of-home placements, especially with a noncustodial parent or kin, and the extent to which those practices are uniform statewide;
- (2) policies and procedures regarding the application of the Indian Child Welfare Act of 1978 across the state and especially in the urban jurisdictions, many of which are near Indian reservations and all of which may involve Indian children. The audit may include a review of the Guidelines for State Courts for Indian child abuse and neglect proceedings of the Bureau of Indian Affairs that the Montana Supreme Court has held are applicable and should be considered in ICWA cases.
- (3) the extent to which the Department's policies and procedures, such as family group conferencing and foster care home recruiting, reflect cultural needs and are conducted in a manner that considers cultural practices and language;
- (4) the extent to which the training of social workers, County Attorneys, and courts is relevant regarding the state and federal provisions pertaining to child protective services; and
- (5) the provision of recommendations regarding management, personnel, and training needs of the Department for child protective services.

Agency Responses

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



JUDY MARTZ
GOVERNOR

GAIL GRAY, Ed.D.
DIRECTOR

STATE OF MONTANA

September 17, 2002

Mr. Scott Seacat
Legislative Auditor
Room 160, State Capitol
P.O. Box 201705
Helena, Montana 59620-1705

SEP 17 2002

Dear Mr. Seacat:

The Department of Public Health and Human Services, Child and Family Services Division, received and reviewed the Child Protective Service Performance Audit completed by the Legislative Audit Division. We acknowledge the validity of the recommendations and find that these recommendations parallel the conclusions drawn from our own internal assessments.

The Division notes that the genesis of many of the issues related to the recommendations is the direct result of the high caseloads of CPS workers and the lack adequate financial resources. Complete implementation of all of the recommendations may not be possible at this time, because of this lack of resources.

Our formal response to the individual findings follows:

Recommendation #1:

We recommend CFSD, the Department of Justice, and the Supreme Court continue to work to improve communication and coordination between the division, county attorneys, and district court judges to increase CPS consistency and statutory compliance.

Concur.

CFSD will continue established procedures to communicate and coordinate with county attorneys and district court judges including updating and disseminating the Child Abuse and Neglect Law Deskbook for Judges and County Attorneys as statutory changes occur and sponsoring a METNET in the fall of 2003 to provide information regarding statutory revisions effective after the 2003 Legislative Session. Local staff will work to increase communication with county attorneys and district court judges.

Recommendation #2:

We recommend CFSD establish specific policies and procedures on acceptable types of case file documentation to improve consistency of information to better support social worker actions and decisions.

Concur.

CFSD is currently piloting a training curriculum on documentation, case recording, and writing affidavits. This curriculum will be presented to the Division's Community Social Work Supervisors during the October meeting with statewide implementation by December 2002. Once the procedures are implemented, policies will be developed and will be implemented effective October 2003.

The new policies will address the documentation issues contained in this recommendation and recommendation Nos. 4, 12, 13, and 14. CFSD management will develop policies and procedures clarifying the required documentation and will work with staff to improve documentation.

Recommendation #3:

In order to improve services provided to families, we recommend CFSD:

- A. **Use family group decision-making on a more consistent basis.**

Concur.

All CPS workers will receive training in conducting family group decision-making meetings (FGDM) by late fall, 2002. CFSD is committed to the complete institutionalization of FGDM into child protection practice and will continue to work toward utilizing FGDM on a consistent basis statewide.

- B. **Establish a standardized, detailed treatment plan outline.**

Concur.

CFSD will develop a standardized, detailed treatment plan outline incorporating the statutory requirements included in Mont. Code Ann. § 41-3-443 by March 2003. The standardized plan will be incorporated into policy effective October 1, 2003. The Division will encourage the use of the standardized outline statewide, acknowledging that if a state district court prefers a different format, the court-preferred format will be utilized in that jurisdiction.

Recommendation #4:

We recommend CFSD ensure all foster care placement actions are supported and clearly documented in CPS case files.

Concur.

The CFSD Management Team will continue to work with the Community Social Work Supervisors to increase social workers' efforts to document their actions. This recommendation will be considered when developing the procedures for Recommendation No. 2.

Recommendation #5:

To improve supervisory review over social worker activities we recommend CFSD:

- A. Clarify policy on the type and frequency of supervisory review of case files.**

Concur.

CFSD will establish policy regarding supervisory review of case files by October 2003.

- B. Expand existing policy to require supervisors to sign-off on elements listed on the master checklist.**

Concur.

CFSD will incorporate supervisory sign-off into the master checklist policy effective October 2003.

- C. Review the caseloads of all social worker supervisors and reallocate caseloads where possible.**

Concur.

Supervisors carry a caseload when their respective areas do not have CPS social workers to whom the cases may be assigned. The Division will review the caseloads of the Community Social Work Supervisors by December 30, 2002 and reallocate, wherever possible, considering the Division's current staffing pattern.

- D. Ensure performance appraisals are completed on social workers and social worker supervisors on a regular basis.**

Concur.

The CFSD Management Team will work with the Community Social Work Supervisors immediately to establish a timeframe within which all performance appraisals will be completed and to establish a schedule to complete subsequent performance appraisals.

Recommendation #6:

We recommend CFSD implement a quality control system by periodically reviewing CPS case files and continuing to conduct stakeholder meetings.

Partially Concur.

The supervisory review implemented in response to this audit will assist in the periodic review of CPS case files. The CFSD Management Team will continue designing a quality control system. While this system may include conducting stakeholder meeting and increased case file reviews, the final design and implementation will be dependent upon the available resources.

Recommendation #7:

To ensure a more consistent fair hearings process for CPS substantiation appeals, we recommend:

A. DPHHS develop ARMs for substantiation fair hearings.

Concur.

Draft Administrative Rules for substantiation fair hearings are in the review process. The proposed Administrative Rules should be published within the next two months.

B. CFSD develop policies and procedures specifically related to substantiation fair hearings.

Concur.

Current policies have been revised and will be effective beginning October 2002. Upon finalization of the proposed rules mentioned above, policies and procedures will be amended, if necessary, to maintain consistency with the adopted rules.

Recommendation #8:

We recommend the department seek legislation to clarify its authority to maintain child protective services information on individuals where the department has determined children are not in danger and investigations are not needed.

Partially Concur.

CFSD acknowledges the need for clarification regarding retention of information when no investigation has been required. Instead of requesting legislation on this issue, the Division intends to address this issue by revising the current Administrative Rules of Montana regarding

record retention. The record retention proposal will be submitted to the Community Social Work Supervisors at the October 2002, meeting. The proposed rules will be drafted and published by May 2003.

Recommendation #9:

We recommend CFSD:

- A. **Establish a workload/caseload tracking system to further analyze social worker activities and to help establish division priorities with existing resources.**

Concur

CFSD intends to develop a system to analyze workload/caseload issues. A timeframe cannot be identified because of the current fiscal situation.

- B. **Seek legislative clarification regarding the CFSD's future mission if it formally determines child abuse intervention services is adversely affecting child protection services.**

Partially concur.

The Division assessed whether or not provision of child abuse intervention services is adversely affecting child protection services and identified a strong nexus between child abuse intervention services and child protective services. The Division determined providing child abuse intervention services, as defined by legislative audit division (LAD) staff, cannot adversely affect child protective services because the two cannot be separated - child abuse intervention services are a component of child protective services.

The Division does not agree with the LAD audit staff that "child abuse intervention" is distinguishable from "child protection services." LAD staff define the services provided by the social worker (or a contracted provider) after investigation but prior to foster care placement as intervention services and the services provided by the social worker after investigation and placement in foster care as protective services. Intervention services are part of the child protective services continuum which is represented as: Report → Investigation → Intervention Services (to prevent foster care placement) → Foster Care Placement (if intervention services are not successful) → Reunification/Adoption/Permanent Placement. The "child abuse intervention" services referred to by the Auditors are an integral component of the child protective services system. Therefore, "child abuse intervention services" do not adversely affect child protective services.

Both Montana Codes Annotated and the federal Adoption and Safe Families Act of 1997 require the social worker to make reasonable efforts to prevent a foster care placement and, if a foster care placement is necessary, to make reasonable efforts to reunite the child with his/her parent(s). Intervention services are the necessary tool, which enables the social worker to meet the

reasonable efforts requirement. If the intervention services and foster care services were bifurcated, the result would be an uncoordinated system, which would not meet the needs of the children in Montana's child protective system.

The Division will be proposing legislation to the 2003 Legislature regarding voluntary protective services (categorized by LAD staff as "child abuse intervention" services). This proposed legislation will clarify the importance of voluntary protective services in the child protective services continuum. The Division believes that working with families on a voluntary basis without court involvement can result in better outcomes for children. Therefore, this proposed legislation represents the Division's "diversionary program" in that it reflects the current continuum of the child protective services system and provides statutory authority for the Division to provide voluntary protective services to avoid the need for court intervention.

Recommendation #10:

- A. **We recommend CFSD, Department of Justice, and the Supreme Court re-emphasize ICWA's qualified expert witness requirements as part of their training programs.**

Concur.

CFSD will continue to emphasize the requirement for a qualified expert witness in ICWA cases. This requirement is stressed during the ICWA training for newly-hired social workers and is stressed during the annual policy training for social workers. In addition, the Child Abuse and Neglect Law Deskbook for Judges and County Attorneys contains a chapter on ICWA in which this requirement is fully discussed. Finally, the METNET training provided for county attorneys and judges in the fall following the legislative session contains a segment on ICWA during which the qualified expert witness requirement is also discussed.

- B. **We recommend CFSD and the Department of Justice continue to coordinate efforts to identify and recruit qualified expert witnesses.**

Concur

CFSD will continue its efforts to identify individuals willing to testify as qualified expert witnesses in ICWA cases. In June 2002, the Division sponsored the second orientation for individuals willing to testify as qualified expert witnesses. Thirty individuals attended the orientation. Subsequent to the orientation, the biographies of the participants were incorporated into the ICWA Qualified Expert Witness Handbook and the revisions were disseminated to county attorneys, state district courts, tribal courts, tribal social services, and CFSD local offices. In addition, the ICWA Specialist communicates with the attorney in the Department of Justice who developed the ICWA Handbook.

Recommendation #11:

We recommend CFSD:

- A. Assure that tribal governments have sufficient opportunities to comment on policy and procedure development affecting tribal activities.**

Concur

CFSD will ensure the tribal governments have an opportunity to provide input when major changes in Division operations occur. The Division has worked with tribal governments regarding major policy changes in the past. For example, after passage of the Adoption and Safe Families Act, during 1998 and into 1999, Division staff met with representatives of the tribal court and/or tribal social services staff for the seven Montana reservations to discuss the new federal requirements and provide technical assistance in implementing these requirements.

- B. Increase efforts to coordinate case management activities with tribal governments.**

Concur

CFSD will continue to increase the efforts to coordinate case management activities with tribal social services and will continue to emphasize the need to communicate with tribal social services regarding Indian children in the custody of the State. The importance of coordination and communication with tribal social services will continue to be emphasized during training for newly-hired social workers and during annual policy training.

- C. Review policies and procedures to assure all critical elements of ICWA are addressed in the manual and ICWA checklist.**

Concur.

CFSD revised current policy to clarify the procedures for voluntary relinquishment of Indian children effective October, 2002. The Division will continue to analyze ICWA and other policies related to issues identified by the Auditors. If additional revisions are required, they will be implemented effective October 1, 2003.

CFSD has reviewed the ICWA checklist in view of the Auditors' comments and will not be changing the format of the checklist at this time, because the checklist serves the purpose for which it was intended. The additional elements recommended by the Auditors to be included in the ICWA checklist will be addressed when the Division develops the procedures regarding documentation.

Recommendation #12:

We recommend CFSD establish specific policies and procedures for required case file documentation to improve consistency of ICWA information and to better support social

worker actions and decisions.

Concur

CFSD will address documentation of ICWA-related case work when developing the procedures discussed under Recommendation No. 2. The documentation procedures and policies will be developed and implemented by October 1, 2003.

Recommendation #13:

We recommend CFSD increase its focus on having documentation that clearly demonstrates the active level of effort required for ICWA cases.

Concur.

CFSD will address documentation of ICWA-related case work when developing the procedures discussed under Recommendation No. 2. The documentation of the active efforts made in ICWA cases will be specifically incorporated into the training on how to write affidavits. The affidavit training will be finalized by October 1, 2003.

Recommendation #14:

We recommend the division:

- A. Re-emphasize ICWA placement as part of CFSD's training curriculum.**

Concur.

CFSD will continue to emphasize ICWA placement preferences in both the training for newly-hired social workers and the annual policy training.

- B. Develop a methodology for improving its documentation supporting reasons for not using ICWA-preferred foster care placements.**

Concur.

CFSD will address documentation of ICWA-related case work when developing the procedures discussed under Recommendation No. 2. The policies and procedures will be developed and implemented by October 1, 2003.

- C. Increase emphasis on recruiting tribally accepted foster homes, which should include coordinating recruiting and licensing activities with tribal organizations.**

Concur.

CFSD will meet with tribal social services representatives at the local level to draft protocol to be used for the exchange of information regarding foster homes licensed by the Division and foster homes licensed by tribal social services. Regional Division staff will schedule meetings with their counterparts in tribal social services for the reservations in each respective region to begin these discussions. This dialogue will be initiated by January 2003, and will continue as needed.

CFSD has executed a contract with the Montana State Foster and Adoptive Parent Association under which the foster parent association will assist the Division in statewide recruitment of foster parents. The Division will initiate discussions with the Association by January 2003, to determine whether or not the Association can assist the Division in recruitment of Indian foster homes off-reservation.

Recommendation #15:

We recommend the division:

A. Clarify policy on the type and frequency of supervisory review of ICWA case files.

Concur

The policy related to supervisory review of ICWA case files will be incorporated into the policy referred to in Recommendation No. 5. This policy will be developed and implemented by October 1, 2003.

B. Expand CFSD policy to require supervisors to sign off on the ICWA checklist.

Concur.

CFSD will incorporate a supervisory sign-off into the ICWA checklist effective October 1, 2003.

Recommendation #16:

We recommend the CFSD:

A. Establish minimum ongoing training standards for social workers through the use of:

- performance appraisals
- input from division processes and personnel
- input from external sources such as judges and county attorneys.

Concur.

CFSD is in the process of developing a policy establishing minimum ongoing training standards.

- B. Develop a centralized process to initiate a standardized ongoing training curriculum to address the established standards and to monitor staff completion of the curriculum.**

Concur.

CFSD will develop a process to monitor staff completion of the minimum training requirements within the required timeframe.

Recommendation #17:

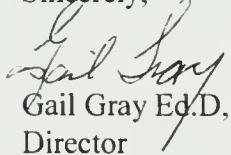
We recommend the CFSD, Department of Justice, and Supreme Court seek ways to encourage and expand training for legal professionals in CPS-related topics.

Concur.

The Division will work with the Department of Justice and the Supreme Court in training legal professionals in CPS-related topics. The Division will meet with the Attorney General and the Chief Justice of the Supreme Court by January 2003, to initiate these discussions.

The Division Management Team and I would like to thank the Audit staff for the completeness of the audit and the recommendations.

Sincerely,



Gail Gray Ed.D,
Director

cc: Shirley K. Brown, M.A., J.D.
Marie Matthews, Fiscal Policy Advisor
CFSD Management Team

ATTORNEY GENERAL

STATE OF MONTANA

Mike McGrath
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

September 26, 2002

Scott Seacat
Legislative Auditor
Capitol Station
Helena, MT 59620

RE: Department of Justice Response to Legislative Audit Recommendations #1, #10, and #17

Dear Mr. Seacat:

The following is the formal response from the Department of Justice with respect to the audit recommendations issued by the Legislative Auditor on the Child Protective Services performance audit.

LEGISLATIVE AUDIT RECOMMENDATION NO. 1

The Department of Justice agrees with audit recommendation no. 1. The Department of Justice intends to comply with the audit recommendation by sending a representative from the Child Protection Unit to all meetings held by the Montana Supreme Court, Court Assessment Program; a member of the Child Protection Unit will also attend the semi-annual meetings of the County Attorney Association; a member of the Child Protection Unit will, upon invitation, attend meetings of the DPHHS Management Team, the annual Child Abuse and Neglect Conference and, when appropriate, regional training sessions offered by DPHHS program and legal staff. A member of the Child Protection Unit will also be available to attend the semi-annual meetings of the district court judge's association. The purpose of attendance at the meetings suggested above would be to engage in proactive discussions with all appropriate parties to improve communication and coordination between all individuals and entities involved with the child abuse and neglect system. The Child Protection Unit will continue to aggressively pursue changes to the Montana Statutes and Montana Child Abuse and Neglect Desk Book in order to provide more consistency in the implementation of the statutes and policies in the area of child abuse and neglect and to provide more effective representation of children.

Legislative Auditor
September 26, 2002
Page two

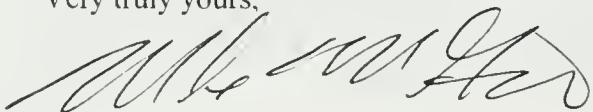
LEGISLATIVE AUDIT RECOMMENDATION NO. 10

The Department of Justice agrees with audit recommendation no. 10. The Department of Justice intends to comply with this audit recommendation by working with DPHHS, individual county attorneys and the County Attorney Association to assist DPHHS in the identification, recruitment and training of qualified ICWA expert witnesses across the State of Montana. The Child Protection Unit will also assist DPHHS in making county attorneys more aware of ICWA's expert witness requirement and training county attorneys to ensure greater compliance with the requirement. The Child Protection Unit could also assist DPHHS by helping to disseminate ICWA qualified expert witness lists by region and by helping DPHHS maintain a current roster of qualified ICWA expert witnesses. The Child Protection Unit expects to meet this obligation by meeting individually with county attorneys in our specific regions and by making presentations at the county attorney association semi-annual meetings. The Department of Justice expects this recommendation to be implemented immediately and will continue to be performed on an on-going basis in order to maintain a current, accurate roster of qualified ICWA expert witnesses.

LEGISLATIVE AUDIT RECOMMENDATION NO. 17

The Department of Justice agrees with audit recommendation no. 17. The Department of Justice intends to comply with this audit recommendation by aggressively pursuing training grant funds in cooperation with the Montana Supreme Court, Court Assessment Program, the Montana Board of Crime Control, Youth Justice Advisory Council and federal training funds identified by the various national associations involved with abuse and neglect issues and the representation of children in the juvenile justice and abuse and neglect system. The Child Protection Unit will also continue to proactively offer training to social workers and county attorneys in specific areas such as: courtroom testimony, testimony of expert witnesses, confidentiality issues in discovery, uniform affidavits, reports to court and the benefits of using uniform pleadings. The Department of Justice expects to begin immediately to meet this obligation and will continue to pursue training funds and offer training on an on-going basis to social workers and county attorneys throughout the year.

Very truly yours,



Mike McGrath
Attorney General

THE SUPREME COURT OF MONTANA

KARLA M. GRAY
CHIEF JUSTICE

215 NORTH SANDERS
P.O. BOX 203001
HELENA, MONTANA 59620-3001



TELEPHONE (406) 444-5490
E-MAIL kgray@state.mt.us
FAX (406) 444-3274

August 15, 2002

Scott Seacat, Legislative Auditor
Legislative Audit Division
Room 160, State Capitol
Helena MT 59620

Dear Mr. Seacat:

I have reviewed at length the thorough and comprehensive final draft report on your performance audit of Child Protective Services. This letter constitutes my written reply to the recommendations relating to the judiciary, as well as a few additional comments, for inclusion in the published report.

I agree in general with Recommendation #1 that the CFSD, the DOJ and the Supreme Court should continue to work to improve communication and coordination between the division, county attorneys, and district court judges to increase CPS consistency and statutory compliance. My agreement, however, is conditioned on the understanding that district court judges have discrete obligations in CPS-related matters which do not permit inappropriate contacts of either a communication or coordination nature with the CFSD or county attorneys on specific cases. With regard to the recommendation that we work with the district court judges to increase CPS consistency and statutory compliance, we certainly will do so. In this regard, please see the attached correspondence between myself and Justice Jim Regnier, the current president of the Montana Judges' Association. As you can see, our efforts are already under way and will continue to be pursued.

With regard to Recommendation #10A, which requests the Supreme Court to re-emphasize ICWA's qualified expert witness requirements as part of the training for district court judges, we agree and will do so. Again, please see the attached correspondence. As an additional observation on this subject, however, I disagree with a statement at page 62 to the extent it may suggest that district court judges have direct responsibilities "for assuring a qualified expert witness testifies at [ICWA] child custody hearings." It is the responsibility of CFSD and/or the county attorneys to ensure that such a qualified expert witness testifies; in instances in which such a witness is required and not produced, it is the responsibility of the judges to apply the law accordingly.

Scott Seacat
August 15, 2002
page two

Recommendation #17 is that the Supreme Court and the other affected entities seek ways to encourage and expand training for legal professionals in CPS-related topics. To the extent the phrase "legal professionals" in this recommendation pertains, in our case, to district court judges, I agree and we will make every effort to do so.

Regarding all of the above Recommendations, it is important for the Legislative Audit Committee to understand that, while every judge I've ever spoken to on the subject of CPS for Montana's children agrees that these cases are of critical importance and high priority, district court judges' caseloads continue to grow and cover the entire breadth of statutory law, common law and constitutional law. Judges cannot be experts in every field. In addition, neither judicial time nor judicial training monies are sufficient for updated training on an annual or even biennial basis in all priority areas.

With specific regard to the discussion in Chapter III regarding judicial responsibilities in meeting the short statutory hearing and other timelines in CPS cases, I know the Committee will understand that judges simply cannot--as a practical matter--review dockets in the hundreds of cases before them on a daily or even weekly basis. They must rely on attorneys and clerks of court to bring matters to their attention which require immediate attention. In this regard, while I mention in the attached correspondence the possibility of amending local district court rules to require notices to the courts by county attorneys of hearing and other deadlines in CPS cases, it is my view that a legislative mandate of this type would be much more efficacious in achieving compliance with the short timelines. While timelines would occasionally continue to be missed--due to court absences, the necessity of prioritizing criminal cases on crowded dockets because of constitutional speedy trial concerns, the numerous other statutory timelines and legislatively imposed "preferences" noted in the audit and the like--I believe legislation in this area would be the best means of achieving compliance.

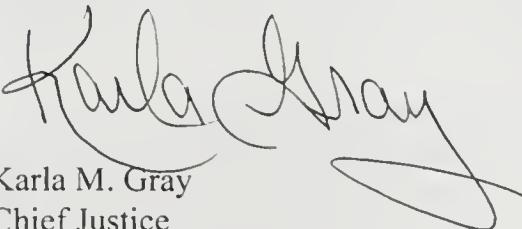
Finally, even though the discussion at pages 51 through 53--beginning "Legal Representation for Indigent Parents"--is not reflected in any Recommendation relating to the courts, I feel compelled to comment briefly and I ask the Committee's indulgence in doing so. I realize that this portion of the audit discussion may not intend to "fault" district court judges for appointing counsel at various stages of CPS proceedings, either before the Termination of Parental Rights stage or at that stage, when appointed counsel is required; because of the length of the discussion, however, it seems to do just that. If the Legislature wants to require

Scott Seacat
August 15, 2002
page three

the appointment of counsel for indigent parents at some stage prior to the Termination petition, it can and should do so (with the understanding, of course, that the costs of that representation--under current state assumption of district court expenses law--would be the State's burden). Such an approach certainly would ensure that all indigent parents receive appointed counsel at the same, earlier stage and might also be perceived as providing a more level playing field between indigent parents, on the one hand, and the combined resources of the CFSD and county attorneys, on the other. Otherwise, leaving the matter to the district court judges' discretion--and the Supreme Court's review on a case by case basis, as noted in the audit--is entirely appropriate and should not result in any negative connotation. (These same comments are also generally applicable to the short discussion on page 29 of the audit report with regard to "delayed" appointments of CASA/GALs. The statute, cited as § 41-3-303, MCA, but now renumbered § 41-3-112, MCA, addresses only guardians ad litem and does not require appointment at a specific stage or time in the proceedings. If the Legislature desires a change in this regard, it may wish to amend the statute, with the same caveat about State responsibility for funding.)

I appreciate the opportunity to respond to the Recommendations and, in addition, to compliment staff on their careful substantive work and drafting. I plan to be available for questions at the Committee meeting in November and, of course, will ensure that staff is present if my schedule becomes unworkable.

Sincerely,


Karla M. Gray
Chief Justice

THE SUPREME COURT OF MONTANA

KARLA M. GRAY
CHIEF JUSTICE

215 NORTH SANDERS
P.O. BOX 203001
HELENA, MONTANA 59620-3001



TELEPHONE (406) 444-5490
E-MAIL kgray@state.mt.us
FAX (406) 444-3274

August 14, 2002

Justice Jim Regnier, President
Montana Judges' Association
PO Box 203001
Helena, MT 59620

Dear Jim:

As I mentioned to you this morning, the Legislative Audit Division has completed its performance audit of Child Protective Services (CPS). While the audit focused primarily on the performance of the Child and Family Services Division of the Department of Public Health and Human Services, it also covered other "players" in the child protective services arena, including district court judges. And rightly so, since judges have a critical role in ensuring that Montana's children receive the protections provided by law.

I realize that the substantive components of the autumn '02 and spring-summer '03 judges' training conferences already are in place. However, it is important that we be responsive to the concerns contained in the performance audit, which relate to increased communication and coordination to increase CPS consistency and statutory compliance, re-emphasizing ICWA's qualified expert witness requirements and, overall, expanded training in CPS-related topics. Consequently, I make the following requests.

First, I would appreciate 10 to 15 minutes during the MJA business meeting this fall to bring the concerns set forth in the audit to the attention of the District Court Judges. I am convinced that bringing these matters to their attention, even briefly, can help move toward meeting the audit's concerns. Indeed, it may be appropriate to ask the trial judges to consider amending their local rules to require separate notices to the court on the filing of petitions and other pleadings in CPS-related actions which trigger statutory deadlines, as a means of helping to meet these short time frames imposed by law.

Justice Jim Regnier
August 14, 2002
page two

Second, I request that the MJA include a substantive training component on child protective services law, including ICWA, during its autumn '03 training conference. While I realize that judges' obligations are incredibly far-reaching, and our time and funding for training in all areas of law are limited, child protective services matters must continue to be a priority for us all. Moreover, the autumn '03 training conference would be an opportune time to cover any changes in the law in these areas which might be passed by the Legislature during the upcoming regular session.

I would appreciate your prompt consideration of my requests. Thank you.

Best regards,



Karla M. Gray
Chief Justice

Montana Judges' Association



JUSTICE BUILDING — ROOM 315
215 NORTH SANDERS
HELENA, MONTANA 59620-3001
TELEPHONE (406) 444-2621

August 15, 2002

Chief Justice Karla M. Gray
Montana Supreme Court
PO Box 203001
Helena, MT 59620

Dear Karla:

With regard to your letter of yesterday's date, consider yourself "on the agenda" for the MJA business meeting in early October. As you suggest, even a quick briefing on these items will help focus the District Court Judges on their critical statutory obligations with regard to CPS/ICWA cases, and enhance consistency and compliance.

Regarding your request for a training component during the autumn '03 MJA training conference, I agree that such a component would be timely and important in ensuring that judges meet their obligations with regard to Montana's children. As you know, my term as President of the MJA ends in October. I will pass along your request to my successor, together with my own recommendation that training on these matters be included in the autumn '03 training conference. I know our trial judges do place a high priority on CPS/ICWA cases, but updated training would be appropriate, and finding a better means of bringing the short statutory timelines to the judges' attention would help a great deal in ensuring that the very short statutory timelines are met.

Thank you for bringing these matters to my attention.

Sincerely,

A handwritten signature in black ink that reads "Jim Regnier".

Jim Regnier
Justice



